

1-14-2015

# PHH Mortgage v. Nickerson Clerk's Supplement Dckt. 42163

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In the  
**SUPREME COURT**  
of the  
**STATE OF IDAHO**

**PHH MORTGAGE,**

Plaintiff-Third Party Defendant-  
Counterdefendant-Respondent,

v.

**CHARLES NICKERSON and DONNA NICKERSON,**

Defendant-Counterclaimant-Third Party  
Complainant-Appellant,

v.

**COLDWELL BANKER MORTGAGE, a d/b/a of PHH MORTGAGE,  
and JPMORGAN CHASE BANK, N.A.,**

Third Party Defendants-Respondents

Appealed from the District Court of the Second  
Judicial District of the State of Idaho, in and  
for Clearwater County

Honorable MICHAEL J. GRIFFIN, District Judge

KIPP L. MANWARING  
Attorney for Plaintiffs-Respondents

PRO SE  
Attorney for Defendants-Appellants

Date	Code	User	Judge
1/10/2011	NCOC	COURTNEY	New Case Filed - Other Claims
	APER	COURTNEY	Plaintiff: PHH Mortgage, Appearance Jason R Rammell
1/14/2011		COURTNEY	Filing: A - All initial civil case filings of any type not listed in categories B-H, or the other A listings below Paid by: Just Law Inc Receipt number: 0000257 Dated: 1/14/2011 Amount: \$88.00 (Cashiers Check) For: Phh Mortgage, (plaintiff)
	SMIS	COURTNEY	Summons Issued
	SMIS	COURTNEY	Summons Issued
	SMIS	COURTNEY	Summons Issued
3/14/2011	AFFD	HOLLIBAUGH	Affidavit of Service
	AFFD	HOLLIBAUGH	Affidavit of Service
5/31/2011	MOTN	CBAKER	Motion For Service By Publication As To Charles Nickerson And Donna Nickerson
	AFFD	CBAKER	Affidavit In Support Of Motion FOr Service By Publication
6/2/2011	APED	CBAKER	Application For Entry Of Default RE: Knowlton & Miles PLLC And Wells Fargo Bank, N.A.
	AFFD	CBAKER	Affidavit Of Jason R. Rammell, ESQ.
6/9/2011	ORDR	COURTNEY	Order For Service By Publication
6/17/2011	DEFT	COURTNEY	Entry Of Default RE: Knowlton & Miles PLLC and Wells Fargo Bank, N.A.
	ORDR	COURTNEY	Order Allowing Entry Of Default RE: Knowlton & Miles PLLC and Wells Fargo Bank, N.A.
6/23/2011	NOAP	COURTNEY	Notice Of Appearance
	APER	COURTNEY	Defendant: Nickerson, Charles Appearance John Charles Mitchell
	APER	COURTNEY	Defendant: Nickerson, Donna Appearance John Charles Mitchell
		COURTNEY	Filing: I1 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: Mitchell, John Charles (attorney for Nickerson, Charles) Receipt number: 0002108 Dated: 6/23/2011 Amount: \$58.00 (Cashiers Check) For: Nickerson, Charles (defendant)
		COURTNEY	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Nickerson, Charles Receipt number: 0002110 Dated: 6/23/2011 Amount: \$6.00 (Cashiers Check)
6/30/2011		CHRISTY	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Clark and Feeney Receipt number: 0002153 Dated: 6/30/2011 Amount: \$49.00 (Cashiers Check)

Date	Code	User		Judge
7/21/2011	AFFP	CBAKER	Affidavit Of Publication	Michael J Griffin
8/12/2011	ANSW	CHRISTY	Charles Nickerson and Donna Nickerson's Answer to Complaint	Michael J Griffin
9/9/2011	NOSV	CHRISTY	Notice Of Service - Request for Discovery	Michael J Griffin
9/16/2011	HRSC	COURTNEY	Hearing Scheduled (Scheduling Conference 10/14/2011 09:30 AM)	Michael J Griffin
	ORDR	COURTNEY	Order Setting Planning and Scheduling Conference, IRCP 16(b)	Michael J Griffin
9/29/2011	NOTC	COURTNEY	Notice Of Intent To Appear Telephonically For 10/14/2011 Hearing	Michael J Griffin
10/13/2011	CMIN	CHRISTY	Court Minutes	Michael J Griffin
	CONT	CHRISTY	Hearing result for Scheduling Conference scheduled on 10/14/2011 09:30 AM: Continued	Michael J Griffin
	HRSC	CHRISTY	Hearing Scheduled (Scheduling Conference 12/16/2011 11:30 AM)	Michael J Griffin
10/14/2011	DFJD	CHRISTY	Default Judgment Entered Without Hearing - against defendants: Knowlton & Miles, PLLC and Wells Fargo Bank N.A. - real property	Michael J Griffin
	CDIS	CHRISTY	Civil Disposition entered for: Knowlton & Miles Plc,, Defendant; Wells Fargo Bank, N.A., Defendant; PHH Mortgage,, Plaintiff. Filing date: 10/14/2011	Michael J Griffin
10/25/2011	NSRV	BARBIE	Notice Of Service	Michael J Griffin
11/9/2011		BARBIE	Notice Of Hearing	Michael J Griffin
12/5/2011	NOSV	KCONNOR	Notice Of Service	Michael J Griffin
12/16/2011	HRVC	CHRISTY	Hearing result for Scheduling Conference scheduled on 12/16/2011 11:30 AM: Hearing Vacated	Michael J Griffin
12/20/2011	MOTN	HOLLIBAUGH	Motion For Leave To Amend Answer and Counter Claim	Michael J Griffin
	NOTC	HOLLIBAUGH	Notice Of Hearing	Michael J Griffin
12/23/2011	HRSC	CHRISTY	Hearing Scheduled (Telephonic Status Conference 02/03/2012 09:00 AM)	Michael J Griffin
		CHRISTY	Notice Of Hearing	Michael J Griffin
1/4/2012	HRSC	CHRISTY	Hearing Scheduled (Motion to Amend 01/06/2012 09:30 AM)	Michael J Griffin
1/6/2012	HRHD	CHRISTY	Hearing result for Motion to Amend scheduled on 01/06/2012 09:30 AM: Hearing Held	Michael J Griffin
	DCHH	CHRISTY	Hearing result for Motion to Amend scheduled on 01/06/2012 09:30 AM: District Court Hearing Held Court Reporter: Keith Evans Number of Transcript Pages for hearing estimated: LESS THAN 100	Michael J Griffin



Date: 1/7/2015

## Second Judicial District Court - Clearwater County

User: BARBIE

Time: 01:38 PM

## ROA Report

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Case: CV-2011-0000028 Current Judge: Michael J Griffin

PHH Mortgage vs. Charles Nickerson, etal.

Date	Code	User	Judge
1/6/2012	CMIN	CHRISTY	Hearing result for Motion to Amend scheduled on 01/06/2012 09:30 AM: Court Minutes
	HRVC	CHRISTY	Hearing result for Telephonic Status Conference scheduled on 02/03/2012 09:00 AM: Hearing Vacated
2/1/2012	ANSW	CHRISTY	Charles Nickerson's and Donna Nickerson's Amended Answer, Conterclaim, Third Party Complaint and Demand for Jury Trial
2/6/2012	SMIS	CHRISTY	Summons Issued - Coldwell Banker Mortgage
	SMIS	CHRISTY	Summons Issued - J.P. Morgan Chase Bank
2/22/2012	AFFD	KCONNOR	Affidavit of Return
2/24/2012		CHRISTY	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Moffatt Thomas Law Firm Receipt number: 0000638 Dated: 2/24/2012 Amount: \$30.00 (Cashiers Check)
		CHRISTY	Miscellaneous Payment: Fax Fee Paid by: Moffatt Thomas Law Firm Receipt number: 0000638 Dated: 2/24/2012 Amount: \$1.00 (Cashiers Check)
3/9/2012	NOAP	CHRISTY	Notice Of Appearance
		CHRISTY	Filing: I1 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: Jon Stenquist Receipt number: 0000989 Dated: 3/22/2012 Amount: \$58.00 (Cashiers Check) For: J.P. Morgan Chase Bank, N.A., (defendant)
	APER	CHRISTY	Defendant: J.P. Morgan Chase Bank, N.A., Appearance Jon A Stenquist
3/12/2012	ANSW	CHRISTY	Answer to Third Party Complaint - JPMorgan Chase Bank
3/14/2012	STIP	KCONNOR	Stipulation to Change Caption
3/20/2012	ORDR	CHRISTY	Order to Change Caption
3/21/2012	ACCS	BARBIE	Acceptance Of Service
3/26/2012	HRSC	CHRISTY	Hearing Scheduled (Status Conference 04/10/2012 09:30 AM)
		CHRISTY	Notice Of Hearing
4/3/2012	NSRV	BARBIE	Notice Of Service of Third Party Defendant JP Morgan Chase Bank's First Set of Interrogatories
4/4/2012		CHRISTY	Filing: I1 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: Jason Rammell Receipt number: 0001121 Dated: 4/4/2012 Amount: \$58.00 (Credit card) For: Coldwell Banker Mortgage, (defendant)

Date	Code	User	Judge
4/4/2012		CHRISTY	Filing: Technology Cost - CC Paid by: Jason Rammell Receipt number: 0001121 Dated: 4/4/2012 Amount: \$3.00 (Credit card) For: Coldwell Banker Mortgage, (defendant)
	ANSW	CHRISTY	Coldwell Banker Mortgage, a d/b/a of PHH Mortgage's Answer to Third Party Complaint
	APER	CHRISTY	Defendant: Coldwell Banker Mortgage, Appearance Jason R Rammell
4/10/2012	HRHD	CHRISTY	Hearing result for Status Conference scheduled on 04/10/2012 09:30 AM: Hearing Held
	DCHH	CHRISTY	Hearing result for Status Conference scheduled on 04/10/2012 09:30 AM: District Court Hearing Held Court Reporter: Keith Evans Number of Transcript Pages for hearing estimated: LESS THAN 100
	CMIN	CHRISTY	Hearing result for Status Conference scheduled on 04/10/2012 09:30 AM: Court Minutes
	ORDR	CHRISTY	Order Scheduling Case for Trial
	HRSC	CHRISTY	Hearing Scheduled (Jury Trial 12/03/2012 09:00 AM) Trial is expected to last 1 week.
	HRSC	CHRISTY	Hearing Scheduled (Final Pretrial and Motions 11/27/2012 01:00 PM)
	HRSC	CHRISTY	Hearing Scheduled (Motion for Summary Judgment 10/02/2012 01:00 PM) MSJ filed by 9/4/12.
4/30/2012	NOSV	KCONNOR	Notice Of Service of Plaintiff/Third Party Defendant's second set of Requests for Admissions, Interrogatories and Request for Production to the Nickersons
5/15/2012	SMRT	CHRISTY	Summons Returned - JP Morgan Chase Bank
	SMRT	CHRISTY	Summons Returned - Coldwell Banker Mortgage
5/21/2012	NOSV	CHRISTY	Notice Of Service
6/1/2012	NOSV	BARBIE	Notice Of Service
	NOSV	BARBIE	Notice Of Service
6/4/2012	NOSV	BARBIE	Notice Of Service
6/6/2012	NOTC	KCONNOR	Notice of Admissions Deemed Admitted
6/7/2012	NOTC	KCONNOR	Notice of Service
6/11/2012	OBJC	KCONNOR	Objection to Notice of Admissions Deemed Admitted and/or Motion to Withdraw or Amend Admissions if Deemed Admitted RE: JPMorgan
6/25/2012		KBROWNING	Plaintiff's Response in Opposition to Defendant Nickersons Objection to Notice of Admissions Deemed Admitted

Date	Code	User		Judge
6/29/2012		HOLLIBAUGH	Nickerson's Expert Witness Disclosure	Michael J Griffin
	WITN	KCONNOR	Expert Witness Discloser	Michael J Griffin
7/3/2012		KBROWNING	JP Morgan Chase Bank, NA's Expert Witness Disclosure	Michael J Griffin
7/6/2012	NOTC	KCONNOR	Notice of Compliance- Response to Request for Admissions	Michael J Griffin
7/10/2012	NOTC	BARBIE	Notice of Service: Third Party Defendant JPMorgan Chase Bank's Responses to Nickersons' First Set of Requests for Admissions	Michael J Griffin
7/17/2012	STIP	CHRISTY	Stipulated Motion for Entry of Protective Order	Michael J Griffin
	ORDR	CHRISTY	Protective Order	Michael J Griffin
7/27/2012	NOTC	CHRISTY	Notice of Taking Deposition Duces Tecum - Charles Nickerson	Michael J Griffin
	NOTC	CHRISTY	Notice of Taking Deposition Deces Tecum - Donna Nickerson	Michael J Griffin
8/22/2012	NOTC	TEMP	Notice of Service of JPMorgan Chase Bank's Answers and Responses to Defendant's Charles and Donna Nickerson's First Set of Interrogatories and Requests for Production	Michael J Griffin
9/21/2012	NOTC	JALLAIN	AMENDED Notice of Taking Deposition Duces Tecum - Donna Nickerson	Michael J Griffin
	NOTC	JALLAIN	AMENDED Notice of Taking Deposition Duces Tecum - Charles Nickerson	Michael J Griffin
9/27/2012	STIP	CHRISTY	Stipulated Motion for Order Modifying Scheduling Order to Extend Summary Judgment Deadline	Michael J Griffin
10/2/2012	HRVC	CHRISTY	Hearing result for Motion for Summary Judgment scheduled on 10/02/2012 01:00 PM: Hearing Vacated MSJ filed by 9/4/12.	Michael J Griffin
10/9/2012	ORDR	CHRISTY	Order Modifying Scheduling Order to Extend Summary Judgment Deadline	Michael J Griffin
10/16/2012	AFCO	JALLAIN	Affidavit Of Counsel in Support of PHH Mortgage Company's Motion for Summary Judgment	Michael J Griffin
	AFFD	JALLAIN	Affidavit in Support of Summary Judgment	Michael J Griffin
	MEMO	JALLAIN	Memorandum in Support of PHH Mortgage Company's Motion for Summary Judgment	Michael J Griffin
	MOSJ	JALLAIN	Motion For Summary Judgment	Michael J Griffin
	AFFD	KCONNOR	Affidavit of Jon A. StenQuist in Support of Chase's Motion for Summary Judgment	Michael J Griffin
	MOTN	KCONNOR	Motion for Summary Judgment	Michael J Griffin
	NOTC	KCONNOR	Notice of Hearing Re: Chase's Motion For Summary Judgment	Michael J Griffin
	MEMO	KCONNOR	Memorandum in Support of Chase's Motion For Summary Judgment	Michael J Griffin

Date	Code	User		Judge
10/18/2012	HRSC	CHRISTY	Hearing Scheduled (Motion for Summary Judgment 11/07/2012 02:00 PM)	Michael J Griffin
		CHRISTY	Notice Of Hearing	Michael J Griffin
10/23/2012	AFFD	JALLAIN	Affidavit in Support of Summary Judgment	Michael J Griffin
	NOTH	JALLAIN	Notice Of Hearing - Plaintiff's Motion for Summary Judgment	Michael J Griffin
	MOTN	JALLAIN	Motion to Appear Telephonically	Michael J Griffin
	AFFD	JALLAIN	Affidavit of Counsel in Support of Motion to Appear Telephonically	Michael J Griffin
	NOTC	JALLAIN	Notice of Compliance - Response to Nickerson's Interrogatories and Requests for Production	Michael J Griffin
	MOTN	JALLAIN	Joint Motion for Order Allowing Counsel to Appear Telephonically for Hearing on Motions for Summary Judgment	Michael J Griffin
10/26/2012	ORDR	BARBIE	Order Granting Motion To Appear Telephonically	Michael J Griffin
11/1/2012	OBJC	BARBIE	Objection To Affidavit Of Ronald E. Casperite And Motion To Strike	Michael J Griffin
	OBJC	BARBIE	Objection To Affidavit Of Jon Stenquist And Motion To Strike	Michael J Griffin
	AFFD	BARBIE	Affidavit Of John C. Mitchell	Michael J Griffin
	MEMO	BARBIE	Memorandum In Opposition To PHH Mortgage's And Chase's Motions For Summary Judgment	Michael J Griffin
11/5/2012	RSPN	JALLAIN	Response in Opposition to the Defendants' Motion to Strike	Michael J Griffin
	RPLY	JALLAIN	Reply Brief of PHH Mortgage	Michael J Griffin
11/6/2012	AFFD	CHRISTY	Affidavit of Brandie S. Watkins in Support of Chases Motion for Summary Judgment	Michael J Griffin
	RPLY	CHRISTY	Reply Memorandum in Support of Chase's Motion for Summary Judgment and in Opposition to Motion to Strike	Michael J Griffin
11/7/2012	HRHD	CHRISTY	Hearing result for Motion for Summary Judgment scheduled on 11/07/2012 02:00 PM: Hearing Held Set up Meet Me Conference	Michael J Griffin
	DCHH	CHRISTY	Hearing result for Motion for Summary Judgment scheduled on 11/07/2012 02:00 PM: District Court Hearing Held Court Reporter: Keith Evans Number of Transcript Pages for hearing estimated: LESS THAN 100 Set up Meet Me Conference	Michael J Griffin
	CMIN	CHRISTY	Hearing result for Motion for Summary Judgment scheduled on 11/07/2012 02:00 PM: Court Minutes Set up Meet Me Conference	Michael J Griffin
11/13/2012	OBJC	CHRISTY	Objection to Affidavit of Brandies S. Watkins and Motion to Strike	Michael J Griffin

Date	Code	User		Judge
11/16/2012	MEMO	CHRISTY	Memorandum Opinion Re: Chases' Motion for Summary Judgment	Michael J Griffin
	SCAN	CHRISTY	Scanned: 8/14/14	Michael J Griffin
	ORDR	CHRISTY	Order Granting Chase's Motion for Summary Judgment	Michael J Griffin
	SCAN	CHRISTY	Scanned: 8/14/14	Michael J Griffin
	ORDR	CHRISTY	Order Granting PHH's Motion for Summary Judgment in Part	Michael J Griffin
	SCAN	CHRISTY	Scanned: 8/14/14	Michael J Griffin
11/26/2012	WLST	JALLAIN	Trial Witness and Exhibit List	Michael J Griffin
	BREF	JALLAIN	Trial Brief	Michael J Griffin
11/27/2012	HRHD	CHRISTY	Hearing result for Final Pretrial Conference scheduled on 11/27/2012 01:00 PM: Hearing Held	Michael J Griffin
	DCHH	CHRISTY	Hearing result for Final Pretrial Conference scheduled on 11/27/2012 01:00 PM: District Court Hearing Held Court Reporter: Keith Evans Number of Transcript Pages for hearing estimated: LESS THAN 100	Michael J Griffin
	CMIN	CHRISTY	Hearing result for Final Pretrial Conference scheduled on 11/27/2012 01:00 PM: Court Minutes	Michael J Griffin
	ORDR	CHRISTY	Order Scheduling Case for Trial	Michael J Griffin
	CONT	CHRISTY	Continued (Jury Trial 02/25/2013 09:00 AM) Trial is expected to last 3 days.	Michael J Griffin
12/3/2012	BRIE	JALLAIN	Amended Trial Brief	Michael J Griffin
	WLST	JALLAIN	Amended Trial Witness and Exhibit List	Michael J Griffin
12/5/2012	MORE	BARBIE	Motion For Reconsideration	Michael J Griffin
	MOTN	BARBIE	Motion To Extend Discovery Deadline	Michael J Griffin
1/15/2013	NOTC	JALLAIN	Notice of Hearing for 01/29/2013 at 10:00 AM; Motion for Reconsideration and Motion to Extend Discovery Deadline	Michael J Griffin
	HRSC	JALLAIN	Hearing Scheduled (Motion to Reconsider 01/29/2013 10:00 AM)	Michael J Griffin
1/24/2013	AFFD	CHRISTY	Affidavit of John C. Mitchell	Michael J Griffin
1/25/2013	MEMO	JALLAIN	JPMorgan Chase Bank's Memorandum in Support of Joinder in Plaintiff PHH Mortgage's Objection to the Nickersons' Motion to Extend Discovery Deadline and Motion to Reconsider	Michael J Griffin
1/29/2013	CONT	CHRISTY	Continued (Motion to Reconsider 02/05/2013 10:00 AM) Motion for Reconsideration and Motion to Extend Discovery Deadline	Michael J Griffin
	NOTC	CHRISTY	Amended Notice of Hearing	Michael J Griffin

Date	Code	User	Judge
2/5/2013	HRHD	CHRISTY	Hearing result for Motion to Reconsider scheduled on 02/05/2013 10:00 AM: Hearing Held Motion for Reconsideration and Motion to Extend Discovery Deadline
	DCHH	CHRISTY	Hearing result for Motion to Reconsider scheduled on 02/05/2013 10:00 AM: District Court Hearing Held Court Reporter: Keith Evans Number of Transcript Pages for hearing estimated: LESS THAN 100 Motion for Reconsideration and Motion to Extend Discovery Deadline
	CMIN	CHRISTY	Hearing result for Motion to Reconsider scheduled on 02/05/2013 10:00 AM: Court Minutes Motion for Reconsideration and Motion to Extend Discovery Deadline
	ORDR	CHRISTY	Order Re: Discovery Compliance
	ORDN	CHRISTY	Order Denying Motion to Reconsider
2/13/2013	PTMO	JALLAIN	Pre-trial Motion in Limine
	AFFD	JALLAIN	Affidavit of Counsel in Support of Pre-Trial Motion in Limine
2/14/2013	NOTC	CHRISTY	Notice of Telephonic Status Conference
	HRSC	CHRISTY	Hearing Scheduled (Telephonic Status Conference 02/19/2013 12:00 PM) Set up Meet Me Conf.
	NOTC	CHRISTY	Notice of Telephonic Status Conference
2/19/2013	HRHD	CHRISTY	Hearing result for Telephonic Status Conference scheduled on 02/19/2013 12:00 PM: Hearing Held Set up Meet Me Conf. (OFF THE RECORD)
	HRVC	CHRISTY	Hearing result for Court Trial scheduled on 02/25/2013 09:00 AM: Hearing Vacated Trial is expected to last 3 days.
	HRSC	CHRISTY	Hearing Scheduled (Telephonic Scheduling Conference 02/26/2013 01:00 PM)
2/21/2013		CHRISTY	Notice Of Hearing
2/25/2013	MOTN	JALLAIN	Motion to Withdraw
	AFFD	JALLAIN	Affidavit in Support of Motion to Withdraw
	NOTC	JALLAIN	Notice of Hearing
2/26/2013	HRSC	CBAKER	Hearing Scheduled (Motion to Withdraw 02/26/2013 01:00 PM)
	CONT	CHRISTY	Continued (Motion to Withdraw 03/12/2013 01:00 PM)
	HRVC	CHRISTY	Hearing result for Telephonic Scheduling Conference scheduled on 02/26/2013 01:00 PM: Hearing Vacated

Date	Code	User	Judge
3/4/2013	NOTC	CHRISTY	Amended Notice of Hearing
3/11/2013	NOTC	CHRISTY	Amended Notice of Hearing
	NOTC	CHRISTY	Amended Notice of Hearing
	CONT	CHRISTY	Continued (Motion to Withdraw 03/26/2013 03:00 PM)
3/25/2013	NOTC	CHRISTY	Amended Notice of Hearing
	CONT	CHRISTY	Continued (Motion to Withdraw 04/16/2013 10:30 AM)
4/15/2013	CONT	BARBIE	Hearing result for Motion to Withdraw scheduled on 04/16/2013 10:30 AM: Continued
4/16/2013	NOTC	CHRISTY	Amended Notice of Hearing
	HRSC	CHRISTY	Hearing Scheduled (Motion to Withdraw 04/30/2013 11:30 AM)
4/17/2013	NOTC	CHRISTY	Amended Notice of Hearing
4/29/2013	NOTC	CHRISTY	Amended Notice of Hearing
	CONT	CHRISTY	Continued (Motion to Withdraw 05/07/2013 02:30 PM)
5/1/2013	OBJC	BARBIE	Objection To Further Continuances
5/7/2013	CONT	BARBIE	Hearing result for Motion to Withdraw scheduled on 05/07/2013 02:30 PM: Continued
	HRSC	BARBIE	Hearing Scheduled (Motion to Withdraw 05/14/2013 02:30 PM)
		BARBIE	Notice Of Hearing
5/14/2013	HRHD	CHRISTY	Hearing result for Motion to Withdraw scheduled on 05/14/2013 02:30 PM: Hearing Held
	DCHH	CHRISTY	Hearing result for Motion to Withdraw scheduled on 05/14/2013 02:30 PM: District Court Hearing Held Court Reporter: Keith Evans Number of Transcript Pages for hearing estimated: LESS THAN 100
	CMIN	CHRISTY	Hearing result for Motion to Withdraw scheduled on 05/14/2013 02:30 PM: Court Minutes
5/15/2013	ORDR	BARBIE	Order Granting Leave To Withdraw - John C. Mitchell for Defendant
6/6/2013	AFMA	JALLAIN	Affidavit Of Mailing from John Mitchell
8/19/2013	AFFD	JALLAIN	Affidavit of Paul Thomas Clark
		BARBIE	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Nickerson, Donna Receipt number: 0002684 Dated: 8/19/2013 Amount: \$2.00 (Cash)
	NOAP	BARBIE	Notice Of Appearance - Donna and Charles Nickerson for Donna and Charles Nickerson

Date	Code	User	Judge
9/9/2013	AFFD	BARBIE	Affidavit Of Paul Thomas Clark RE: Nickerson's Unclaimed Certified Mail Michael J Griffin
10/2/2013	AFFD	JJENSEN	Affidavit Of Paul Thomas Clark RE: Nickerson's Unclaimed Certified Mail Michael J Griffin
11/13/2013	HRSC	CHRISTY	Hearing Scheduled (Telephonic Status Conference 12/17/2013 08:30 AM) Set up MeetMe Conf. Michael J Griffin
		CHRISTY	Notice Of Hearing Michael J Griffin
11/14/2013	MOTN	BARBIE	Plaintiff's Second Motion For Summary Judgment Michael J Griffin
	MEMO	BARBIE	Memorandum In Support Of Plaintiff's Second Motion For Summary Judgment Michael J Griffin
	AFFD	BARBIE	Affidavit Of Chase Employee In Support Of Second Motion For Summary Judgment Michael J Griffin
	AFFD	BARBIE	Second Affidavit Of Ronald E. Casperite In Support Of PHH's Second Motion For Summary Judgment Michael J Griffin
	NOTC	CHRISTY	Notice of Hearing - Plaintiff's Second Motion for Summary Judgment Michael J Griffin
12/2/2013		LMCMILLAN	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Nickerson, Donna Receipt number: 0003766 Dated: 12/2/2013 Amount: \$17.00 (Cash) Michael J Griffin
12/3/2013	MEMO	BARBIE	Memorandum In Opposition To Plaintiff's Second Motion For Summary Judgment Michael J Griffin
		LMCMILLAN	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Nickerson, Donna Receipt number: 0003786 Dated: 12/3/2013 Amount: \$1.00 (Cash) Michael J Griffin
12/10/2013	REPL	LMCMILLAN	Reply Brief Michael J Griffin
12/16/2013	HRSC	CHRISTY	Hearing Scheduled (Motion for Summary Judgment 12/17/2013 09:30 AM) Set up MeetMe. Michael J Griffin
	CONT	CHRISTY	Continued (Telephonic Status Conference 12/17/2013 09:30 AM) Set up MeetMe Conf. Michael J Griffin
12/17/2013	MOTN	CHRISTY	Motion for Summary Judgment Michael J Griffin
	AFFD	CHRISTY	Affidavit of Charles Nickerson in Support of Motion for Summary Judgment Michael J Griffin
	MEMO	CHRISTY	Memorandum for Motion for Summary Judgment Michael J Griffin
	HRHD	CHRISTY	Hearing result for Telephonic Status Conference scheduled on 12/17/2013 09:30 AM: Hearing Held Set up MeetMe Conf. Michael J Griffin



Date	Code	User	Judge
12/17/2013	DCHH	CHRISTY	Hearing result for Telephonic Status Conference scheduled on 12/17/2013 09:30 AM: District Court Hearing Held Court Reporter: Keith Evans Number of Transcript Pages for hearing estimated: LESS THAN 100 Set up MeetMe Conf.
	CMIN	CHRISTY	Hearing result for Telephonic Status Conference scheduled on 12/17/2013 09:30 AM: Court Minutes Set up MeetMe Conf.
	HRHD	CHRISTY	Hearing result for Motion for Summary Judgment scheduled on 12/17/2013 09:30 AM: Hearing Held Set up MeetMe.
	DCHH	CHRISTY	Hearing result for Motion for Summary Judgment scheduled on 12/17/2013 09:30 AM: District Court Hearing Held Court Reporter: Keith Evans Number of Transcript Pages for hearing estimated: LESS THAN 100 Set up MeetMe.
	CMIN	CHRISTY	Hearing result for Motion for Summary Judgment scheduled on 12/17/2013 09:30 AM: Court Minutes Set up MeetMe.
12/20/2013	HRSC	BARBIE	Hearing Scheduled (Motion for Summary Judgment 02/11/2014 08:30 AM)
		BARBIE	Notice Of Hearing
1/24/2014	RSPN	JALLAIN	Response in Opposition to the Nickersons' Motion for Summary Judgment
	MOTN	JALLAIN	Plaintiff's Motion to Amend to Conform to Evidence
	MOTN	JALLAIN	Plaintiff's Motion to Strike
	MOTN	JALLAIN	Motion to Take Judicial Notice
	NOTH	JALLAIN	Notice Of Hearing - Plaintiff's Motions
	HRSC	CHRISTY	Hearing Scheduled (Motion for Leave to File Amended Complaint 02/11/2014 08:30 AM)
	HRSC	CHRISTY	Hearing Scheduled (Motion 02/11/2014 08:30 AM) to Strike
	HRSC	CHRISTY	Hearing Scheduled (Motion 02/11/2014 08:30 AM) to Take Judicial Notice
2/5/2014	MOCT	CHRISTY	Motion To Continue
2/10/2014	OBJC	BARBIE	Objection To The Defendants' Motion To Continue
2/11/2014	HRHD	CHRISTY	Hearing result for Motion for Summary Judgment scheduled on 02/11/2014 08:30 AM: Hearing Held Telephonic - Set up MeetMe

Date	Code	User	Judge
2/11/2014	DCHH	CHRISTY	Hearing result for Motion for Summary Judgment scheduled on 02/11/2014 08:30 AM: District Court Hearing Held Court Reporter: Keith Evans Number of Transcript Pages for hearing estimated: LESS THAN 100 Telephonic - Set up MeetMe
	CMIN	CHRISTY	Hearing result for Motion for Summary Judgment scheduled on 02/11/2014 08:30 AM: Court Minutes Telephonic - Set up MeetMe
	HRHD	CHRISTY	Hearing result for Motion scheduled on 02/11/2014 08:30 AM: Hearing Held to Take Judicial Notice
	DCHH	CHRISTY	Hearing result for Motion scheduled on 02/11/2014 08:30 AM: District Court Hearing Held Court Reporter: Keith Evans Number of Transcript Pages for hearing estimated: LESS THAN 100 to Take Judicial Notice
	CMIN	CHRISTY	Hearing result for Motion scheduled on 02/11/2014 08:30 AM: Court Minutes to Take Judicial Notice
	HRHD	CHRISTY	Hearing result for Motion scheduled on 02/11/2014 08:30 AM: Hearing Held to Strike
	DCHH	CHRISTY	Hearing result for Motion scheduled on 02/11/2014 08:30 AM: District Court Hearing Held Court Reporter: Keith Evans Number of Transcript Pages for hearing estimated: LESS THAN 100 to Strike
	CMIN	CHRISTY	Hearing result for Motion scheduled on 02/11/2014 08:30 AM: Court Minutes to Strike
	HRHD	CHRISTY	Hearing result for Motion for Leave to File Amended Complaint scheduled on 02/11/2014 08:30 AM: Hearing Held
	DCHH	CHRISTY	Hearing result for Motion for Leave to File Amended Complaint scheduled on 02/11/2014 08:30 AM: District Court Hearing Held Court Reporter: Keith Evans Number of Transcript Pages for hearing estimated: LESS THAN 100
	CMIN	CHRISTY	Hearing result for Motion for Leave to File Amended Complaint scheduled on 02/11/2014 08:30 AM: Court Minutes
	ORDR	KCONNOR	Order Denying Motion to Continue
2/18/2014	BREF	BARBIE	Reply Brief In Support Of Nickersons' Motion For Summary Judgment

Date	Code	User	Judge
2/18/2014	MISC	BARBIE	Response In Opposition To Plaintiff's Motion To Conform To Evidence
	MISC	BARBIE	Response In Opposition To Plaintiff's Motion To Strike
	MISC	BARBIE	Response In Opposition To Plaintiff's Motion To Take Judicial Notice
3/7/2014	NOTC	CHRISTY	Notice of Supplemental Evidence
3/19/2014	OBJC	CHRISTY	Objection to the Defendants' Notice of Supplemental Evidence
3/26/2014	MISC	BARBIE	Response To Plaintiff's Objection To Notice Of Supplemental Evidence
	OBJC	BARBIE	Objection To Second Affidavit Of Ronald E. Casperite
4/4/2014	ORDR	BARBIE	Order Denying Motion To Take Judicial Notice
	ORDR	BARBIE	Order Granting Motion To Strike
	MEMO	BARBIE	Memorandum Opinion RE: Plaintiff's Second Motion For Summary Judgment And Nickerson's Motion Summary Judgment
	JDMT	BARBIE	Judgment - Principal - \$340,339.84 together with interest at the lawful rate until paid in full.
	CDIS	BARBIE	Civil Disposition entered for: Nickerson, Charles, Defendant; Nickerson, Donna, Defendant; PHH Mortgage,, Plaintiff. Filing date: 4/4/2014
	SCAN	SFOSTER	Scanned: 04/07/2014
	SCAN	SFOSTER	Scanned: 04/07/2014
4/18/2014	MEMO	BARBIE	Plaintiff's Memorandum of Attorney Costs and Fees
	AFFD	BARBIE	Affidavit Of Counsel In Support Of Motion For Costs And Fees
	MOTN	BARBIE	Plaintiff's Motion For Costs and Fees
4/22/2014	MOTN	CHRISTY	Motion to Strike Second Affidavit of Ronald E. Casperite
	MOTN	CHRISTY	Motion to Reconsider Order Granting Plaintiff's Motion to Strike
	MOTN	CHRISTY	Motion to Reconsider Judgment
	MOTN	CHRISTY	Motion to Reconsider Chase's and PHH's Summary Judgments
	MOTN	CHRISTY	Motion for Leave to Amend Answer, Counterclaim, Third Party Complaint and Demand for a Jury Trial
	AFFD	CHRISTY	Affidavit in Support of Motions to Reconsider
	NOTC	CHRISTY	Notice of Hearing - Defendants' Motions
	HRSC	CHRISTY	Hearing Scheduled (Motion to Reconsider 05/27/2014 10:00 AM)

Date	Code	User	Judge
5/5/2014	MEMO	BARBIE	Memorandum in Support of Motion to Reconsider Judgment
	MEMO	CHRISTY	Memorandum in Support of Motion to Reconsider Order Granting Plaintiff's Motion to Strike
	MEMO	CHRISTY	Memorandum in Support of Motion to Reconsider Chase's and Phh's Summary Judgments
	ANSW	CHRISTY	Charles Nickerson's and Donna Nickerson's Amended Answer, Counterclaim, Third Party Complaint and Demand for Jury Trial
	MOTN	CHRISTY	Motion to Disallow All Costs and Fees
5/6/2014	ORDR	BARBIE	Order Dismissing Motion To Reconsider
	HRVC	BARBIE	Hearing result for Motion to Reconsider scheduled on 05/27/2014 10:00 AM: Hearing Vacated
	HRSC	BARBIE	Hearing Scheduled (Motion for Attorney fees and Costs 05/27/2014 10:00 AM)
		BARBIE	Notice Of Hearing
5/15/2014	MOTN	CHRISTY	Motion to Continue Hearing on PHH's Motion for Attorney Costs and Fees
	AFFD	CHRISTY	Affidavit of Counsel in Support of PHH's Motion to Continue
	MOTN	CHRISTY	PHH's Motion for Entry of Amended Judgment Including the Taxing of Costs and Fees
	RESP	CHRISTY	Response in Opposition to the Nickersons' Motion for Leave to Amend Pleadings
	MOTN	CHRISTY	Motion for Justice in Clearwater County Idaho
	MOTN	CHRISTY	Motion to Vacate Hearing
	NOTC	CHRISTY	Notice of Hearing on Defendants' Motion for Justice
	HRSC	CHRISTY	Hearing Scheduled (Motion 06/10/2014 10:00 AM) Telephonic - Set up MeetMe.
	BNDC	CHRISTY	Bond Posted - Cash (Receipt 1490 Dated 5/15/2014 for 100.00) Estimate for Clerk's Record
5/16/2014	MOTN	JJENSEN	Motion to Suppress and Strike Depositions
	NOTA	JJENSEN	NOTICE OF APPEAL
		JJENSEN	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Nickerson, Charles Receipt number: 0001505 Dated: 5/16/2014 Amount: \$109.00 (Transfer) For: Nickerson, Charles (defendant) and Nickerson, Donna (defendant)
	APSC	BARBIE	Appealed To The Supreme Court
5/20/2014	ORDR	CHRISTY	Order Granting Motion to Continue Hearing on PHH's Motion for Attorney Costs and Fees

Date	Code	User	Judge
5/20/2014	NOHG	BARBIE	Amended Notice Of Hearing - Motion for Costs and Fees
	HRSC	BARBIE	Hearing Scheduled (Motion for Attorney fees and Costs 06/03/2014 09:45 AM)
	OPPO	BARBIE	Response In Opposition To PHH's Motion For Entry Of Amended Judgment
5/22/2014	CONT	CHRISTY	Hearing result for Motion for Attorney fees and Costs scheduled on 05/27/2014 10:00 AM: Continued
6/2/2014	MOTN	BARBIE	Motion To Vacate Attorney Fees and Costs Hearing
6/3/2014	HRHD	CHRISTY	Hearing result for Motion for Attorney fees and Costs scheduled on 06/03/2014 09:45 AM: Hearing Held Telephonic - Set up Meet Me
	DCHH	CHRISTY	Hearing result for Motion for Attorney fees and Costs scheduled on 06/03/2014 09:45 AM: District Court Hearing Held Court Reporter: Keith Evans Number of Transcript Pages for hearing estimated: LESS THAN 100 Telephonic - Set up Meet Me
	CMIN	CHRISTY	Hearing result for Motion for Attorney fees and Costs scheduled on 06/03/2014 09:45 AM: Court Minutes Telephonic - Set up Meet Me
	ADVS	CHRISTY	Case Taken Under Advisement
	OBJC	CHRISTY	Objection
6/6/2014	AFFD	BARBIE	Affidavit in Support of Motion for Relief
	MOTN	BARBIE	Motion for Relief
	BREF	BARBIE	Reply Brief Amending Pleadings
6/10/2014	HRHD	CHRISTY	Hearing result for Motion scheduled on 06/10/2014 10:00 AM: Hearing Held Telephonic - Set up MeetMe.
	DCHH	CHRISTY	Hearing result for Motion scheduled on 06/10/2014 10:00 AM: District Court Hearing Held Court Reporter: Keith Evans Number of Transcript Pages for hearing estimated: LESS THAN 100 Telephonic - Set up MeetMe.
	CMIN	CHRISTY	Hearing result for Motion scheduled on 06/10/2014 10:00 AM: Court Minutes Telephonic - Set up MeetMe.
6/11/2014	ORDR	CHRISTY	Order Dismissing Motions to Reconsider
6/23/2014	AFFD	BARBIE	Second Affidavit of Counsel in Support of Motion for Costs and Fees
6/24/2014	JDMT	BARBIE	Amended Judgment
	SCAN	SFOSTER	Scanned: 07/09/2014

Date	Code	User	Judge
6/25/2014		BARBIE	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Nickerson, Charles Receipt number: 0001891 Dated: 6/25/2014 Amount: \$10.00 (Transfer) Thumb Drive of Hearing
	BNDV	CHRISTY	Bond Posted - Cash (Receipt 1898 Dated 6/25/2014 for 1117.45) Clerk's Record Fee
6/26/2014	CESV	BARBIE	Clerk's Certificate Of Exhibits
	CESV	BARBIE	Certificate Of Service
	MISC	BARBIE	Certificate To Record
7/23/2014	BNDV	BARBIE	Bond Converted (Transaction number 250 dated 7/23/2014 amount 100.00)
	BNDV	BARBIE	Bond Converted (Transaction number 251 dated 7/23/2014 amount 1,117.45)
7/24/2014	OBJC	CHRISTY	Objection to Clerk's Record
7/25/2014	NOTC	CHRISTY	Notice of Hearing - Objection to Clerk's Record
	HRSC	CHRISTY	Hearing Scheduled (Objection to Clerk's Record Hearing 08/19/2014 10:00 AM) by Nickerson's
7/30/2014		BARBIE	Miscellaneous Payment: Clerk's Record on Appeal Fee Paid by: Nickerson, Charles Receipt number: 0002244 Dated: 7/30/2014 Amount: \$1,217.45 (Cashiers Check)
8/5/2014	MOTN	BARBIE	JPMorgan's Motion To Augment Clerk's Record On Appeal
	AFFD	BARBIE	Affidavit Of Jon A. Stenquist In Support Of JPMorgan's Motion To Augment Clerk's Record On Appeal
	NOHG	BARBIE	Notice Of Hearing
8/6/2014	HRSC	BARBIE	Hearing Scheduled (Motion 08/19/2014 10:00 AM) Augment Clerk's Record On Appeal
8/12/2014	CONT	CHRISTY	Continued (Objection to Clerk's Record Hearing 08/21/2014 02:30 PM) by Nickerson's
	CONT	CHRISTY	Continued (Motion 08/21/2014 02:30 PM) Augment Clerk's Record On Appeal (JP Morgan Chase Bank)
		CHRISTY	Amended Notice Of Hearing
8/14/2014	RESP	JDUGGER	JPMorgan Chase Bank, N.A.'s Response To Appellants' Objection To Clerk Record
8/15/2014	ORDR	CHRISTY	Supreme Court Order: Order Amending Title
8/18/2014	ORDR	CHRISTY	Supreme Court Order: Order Re: JP Morgan's Motion to Augment Clerk's Record on Appeal
8/20/2014	CONT	BARBIE	Continued (Objection to Clerk's Record Hearing 09/02/2014 08:30 AM) by Nickerson's

Date	Code	User	Judge
8/20/2014	HRVC	BARBIE	Hearing result for Motion scheduled on 08/21/2014 02:30 AM: Hearing Vacated Augment Clerk's Record On Appeal (JP Morgan Chase Bank)
		BARBIE	Notice Of Hearing
9/2/2014	HRHD	CHRISTY	Hearing result for Objection to Clerk's Record Hearing scheduled on 09/02/2014 08:30 AM: Hearing Held by Nickerson's
	DCHH	CHRISTY	Hearing result for Objection to Clerk's Record Hearing scheduled on 09/02/2014 08:30 AM: District Court Hearing Held Court Reporter: Keith Evans Number of Transcript Pages for hearing estimated: LESS THAN 100 by Nickerson's
	CMIN	CHRISTY	Hearing result for Objection to Clerk's Record Hearing scheduled on 09/02/2014 08:30 AM: Court Minutes by Nickerson's
	APER	CHRISTY	Plaintiff: PHH Mortgage, Appearance Amelia A Sheets
	DENY	CHRISTY	Motion Denied (Objection to Clerk's Record)
	OBJC	CHRISTY	Objection to Title (Filed by Nickerson's to the Supreme Ct.)
9/16/2014	NOTA	BARBIE	AMENDED NOTICE OF APPEAL
9/22/2014	MISC	BARBIE	Amended Notice Of Appeal Filed By Supreme Court
10/2/2014		LMCMILLAN	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Moffatt Thomas Receipt number: 0002916 Dated: 10/2/2014 Amount: \$6.00 (Cashiers Check)
		LMCMILLAN	Miscellaneous Payment: Fax Fee Paid by: Moffatt Thomas Receipt number: 0002916 Dated: 10/2/2014 Amount: \$1.00 (Cashiers Check)
10/6/2014	MOTN	BARBIE	Motion For Relief From Judgment Or Order
	AFFD	BARBIE	Affidavit In Support Of Motion For Relief From Judgment
10/8/2014	MISC	BARBIE	Second Order Amending Title Entered by Supreme Court.
10/14/2014	ORDR	BARBIE	Order Denying Objection To Clerks Record
10/20/2014	MOTN	BARBIE	Motion To Set Aside Judgment
10/21/2014	ORDR	BARBIE	Order RE: Motion To Set Aside Judgment (IRCP 60b)
	MOTN	BARBIE	Motion To Set Aside Judgment Based On Supplemental Evidence Of Fraud On The Court

Date	Code	User		Judge
10/21/2014	AFFD	BARBIE	Affidavit Of Charles Nickerson In Support Of Motion To Set Aside Judgment Based On Supplemental Evidence Of Fraud On The Court	Michael J Griffin
10/22/2014	MOTN	BARBIE	Edited Motion To Set Aside Judgment	Michael J Griffin
	AFFD	BARBIE	Affidavit Of Charles Nickerson In Support Of Edited Motion To Set Aside Judgment	Michael J Griffin
10/28/2014	ORDR	CHRISTY	Order (filed in the Supreme Court 11/3/14)	Michael J Griffin
11/3/2014	MOTN	BARBIE	Motion To Set Schedule On Defendants' I.R.C.P. 60(b) Motions	Michael J Griffin
	MOTN	BARBIE	Motion To Suspend Appeal Pending District Court's Ruling On Appellants' 60(b) Motion - filed in the Supreme Court	Michael J Griffin
11/5/2014	RESP	CHRISTY	Response in Opposition to the Nickersons' Motions	Michael J Griffin
	MOTN	CHRISTY	Plaintiff's Motion to Strike Exhibits Submitted in Affidavits of Charles Nickerson	Michael J Griffin
11/10/2014	MOTN	BARBIE	Motion To Reconsider Order Filed October 28, 2014, Prior To Rendering Judgment On The Nickersons' 60(b) Edited Motion To Set Aside Judgment	Michael J Griffin
11/12/2014	ORDR	BARBIE	Order Denying Motion To Reconsider	Michael J Griffin
	REPL	CHRISTY	Reply Brief in Support of 60(b) Motions	Michael J Griffin
	BREF	BARBIE	Reply Brief In Support Of 60(b) Motions	Michael J Griffin
11/14/2014	RESP	CHRISTY	Response In Opposition to Plaintiff's Motion to Strike Exhibits	Michael J Griffin
	MISC	BARBIE	Supreme Court filed Chase's Objection To Appellants' Motion To Suspend Appeal	Michael J Griffin
11/17/2014	MISC	BARBIE	Supreme Court filed Order Denying Motion To Reconsider (filed in Clearwater Co. 11/12/14)	Michael J Griffin
11/18/2014	MOTN	BARBIE	Motion For Clarification Regarding Briefing And Oral Argument On Nickersons' 60(b) Motion For Relief From Judgment Or Order And 60(b) Motion To Set Aside Judgment Based On Supplemental Evidence	Michael J Griffin
	MEMO	BARBIE	Memorandum Opinion	Michael J Griffin
	ORDR	BARBIE	Order	Michael J Griffin
11/25/2014	ORDR	BARBIE	Order Denying Motion To Suspend Appeal - from Supreme Court	Michael J Griffin
12/1/2014	MOTN	BARBIE	Plaintiff's Second Motion For Costs And Fees	Michael J Griffin
	AFFD	BARBIE	Affidavit Of Amelia A. Sheets In Support Of Plaintiff's Second Motion For Costs And Fees	Michael J Griffin
	MEMO	BARBIE	Plaintiff's Second Memorandum Of Attorneys' Costs And Fees	Michael J Griffin
12/10/2014	NOTA	BARBIE	SECOND AMENDED NOTICE OF APPEAL	Michael J Griffin



Date: 1/7/2015

**Second Judicial District Court - Clearwater County**

User: BARBIE

Time: 01:38 PM

ROA Report

Page 19 of 19

Case: CV-2011-0000028 Current Judge: Michael J Griffin

PHH Mortgage vs. Charles Nickerson, etal.

Date	Code	User	Judge
12/15/2014	MISC	BARBIE	Second Amended Notice of Appeal Filed with the Supreme Court Michael J Griffin
12/29/2014	ORDR	BARBIE	Order RE: Supplemental Record - from Supreme Court Michael J Griffin
1/2/2015	BNDC	BARBIE	Bond Posted - Cash (Receipt 1 Dated 1/2/2015 for 84.50) Michael J Griffin

CHARLES NICKERSON AND DONNA NICKERSON  
3165 Neff Rd  
Orofino, ID 83544

Defendants Pro Se

CLERK OF DISTRICT COURT  
CLEARWATER COUNTY

2014 OCT -6 AM 8:35

CASE NO. CV2011-28

BY BO

**IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE  
OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER**

PHH MORTGAGE,

Plaintiff/Counter-Defendant,

vs.

CHARLES NICKERSON and DONNA  
NICKERSON, husband and wife;  
KNOWLTON & MILES PLLC; WELLS  
FARGO BANK, N.A., AND JOHN DOES I  
thru X

Defendant,

COLDWELL BANKER MORTGAGE, a/d/b/a  
of PHH MORTGAGE, and JPMORGAN  
CHASE BANK, N.A.

Third Party-Defendants.

Case No.: CV 2011-28

**MOTION FOR RELIEF FROM  
JUDGMENT OR ORDER**

COMES NOW, Defendants, Charles and Donna Nickerson, in response to the Amended Judgment filed on June 24, 2014, and in accordance with I.R.C.P. 60(b) sections 1, 2, 3 and 6 request relief from judgment. This request is supported by the below and the Affidavit of Charles Nickerson in Support of Motion for Relief from Judgment submitted in conjunction with this Motion. The Nickersons are filing this as a matter of record and another attempt to find justice and immediate relief from the ongoing criminal assault on our family in Clearwater county even though Judge Griffin indicated to us on June 10, 2014, that "you are spinning your wheels and cannot find relief at the District Court level."

**I.R.C.P. 60(b)(1)**

*Mistake, inadvertence, surprise or excusable neglect*

"Clearly, too, the mistake, inadvertence, surprise or excusable neglect need not be that of the party making the motion. In 7 Moore's Federal Practice, Sec. 60.22[2], page 247, in

1 discussing Federal Rule 60(b)(1), which is identical with Idaho's Rule of the same  
2 number, after commenting on the old rule which restricted relief to cases involving  
3 movant's own mistakes, etc., it is said: "Relief can now be had under 60(b)(1) not only  
4 for the mistake, etc. of the moving party, but also from that of *other parties to the action*,  
5 *the clerk*, and even *the court*. (Emphasis added.)" *Sines v. Blaser*, 98 Idaho 435, 566 P.2d  
6 758 (1977)

### 7 MISTAKE

8 1. This Court made a mistake by not considering the evidence presented prior to  
9 entering final judgment that denies PHH's claim of foreclosure and therefore, the Nickersons  
10 must be granted relief from judgment. First, the Nickersons provided a letter from Chase in  
11 which Chase has stated they own the Nickersons' loan and have the Nickersons' Note in their  
12 possession (see Nickersons' *Notice of Supplemental Evidence* filed on March 7, 2014). This  
13 piece of evidence demonstrates to the Court 1) PHH does not and did not have the Nickersons'  
14 Note in their possession, 2) PHH has committed fraud on the Court by pursuing this wrongful,  
15 fraudulent foreclosure, and 3) PHH does not have standing to foreclose. Second, the Nickersons  
16 demonstrated to the Court the affidavit PHH and the Court relied upon for judgment was  
17 fraudulently notarized and thereby, embodied a criminal act, and thus, was invalid and not  
18 admissible (see Nickersons' *Objection to Second Affidavit of Ronald E. Casperite* filed on March  
19 24, 2014). Therefore, this Court has committed a grave mistake, demonstrated extreme prejudice  
20 against the Nickersons by stating it has chosen to ignore the Nickersons' evidence, and violated  
21 the Idaho Judicial Canon. **Judicial Canon 3.** "A Judge Shall Perform the Duties of Judicial  
22 Office Impartially and Diligently." **B. Adjudicative Responsibilities.** (2) "A judge shall be  
23 faithful to the law and maintain professional competence in it. A judge shall not be swayed by  
24 partisan interests, public clamor or fear of criticism." (emphasis added) This extreme act of  
25 indiscretion is like letting the murderer go free while having the video, the gun and the signed,  
26 verified confession of the murderer sitting in your chambers, which is, in effect, turning your  
27 back on the law. This Court must correct its' mistakes. This Court must reconsider its decision to  
28 ignore the Nickersons pleas for justice because due to these issues alone, justice requires this  
29 Court grant relief from judgment to the Nickersons and the law requires summary judgment in  
30 favor of the Nickersons be granted.

31 2. This Court made a mistake by not acknowledging or noticing the *Second Affidavit of*  
32 *Ronald E. Casperite* was improperly notarized. According to the Idaho Judicial Canon  
referenced above, it is the Court's responsibility to recognize and notice an affidavit that is  
improperly notarized and that a crime has been committed and not prejudicially ignore it

1 especially when it was brought to the attention of the Court prior to final judgment being  
2 rendered. This Court not only made a mistake by rendering judgment based upon this  
3 inadmissible affidavit but demonstrated extreme prejudice against the Nickersons as well which  
4 precluded them from having a fair trial and requires they be granted relief from judgment.

5         3. This Court made a mistake and demonstrated extreme prejudice against the  
6 Nickersons by granting PHH's motion to amend judgment which was filed on May 15, 2014, 41  
7 days after judgment was entered and 27 days after they were allowed to file for an amended  
8 judgment. I.R.C.P. 59(e) requires motions to amend judgment to be served 14 days after entry of  
9 judgment. This Court has shown its prejudice by granting the amended judgment to PHH which  
10 was filed 27 days late and yet refusing the Nickersons' motion for reconsideration because they  
11 misunderstood they had 3 extra days to file based on I.R.C.P. 6(e)(1) because they were served  
12 by mail. The Nickersons were denied justice due to this Court's demonstrated prejudice against  
13 them and must be granted relief from judgment.

14         4. It is a mistake for the Court to enter opinions of undisputed facts that are  
15 contradictory. See *Affidavit of Charles Nickerson in Support of Motion for Relief from Judgment*,  
16 ¶ 7. Contradictions of material facts by definition means those facts are disputed. There are  
17 genuine issues regarding those facts which is particularly true when the Court contradicts itself  
18 regarding those facts. Thus, this Court, according to the rules, cannot grant summary judgment to  
19 Chase or PHH because there are genuine issues surrounding the material facts. I.R.C.P. 56(c)  
20 "...The judgment sought shall be rendered forthwith if the pleadings, depositions, and  
21 admissions on file, together with the affidavits, if any, show that there is NO genuine issue as to  
22 any material fact and that the moving party is entitled to a judgment as a matter of law."  
23 (emphasis added) In addition, because of these contradictions, according to the law and legal  
24 standards set forth by this Court, this Court could not grant summary judgment to PHH or Chase.  
25 "All disputed facts are to be construed liberally in favor of the nonmoving party, and all  
26 reasonable inferences that can be drawn from the record are to be drawn in favor of the  
27 nonmoving party." *Mackay v. Four Rivers Packing Co.*, 145 Idaho 408, 410, 179 P.3d 1064,  
28 1066 (2008). If reasonable people might reach a different conclusion from conflicting inferences  
29 based on the evidence then the motion must be denied. *Id.* "If the evidence is conflicting on  
30 material issues or supports conflicting inferences, or if reasonable minds could reach differing  
31 conclusions, summary judgment must be denied." *Doe v. Sisters of the Holy Cross*, 126 Idaho  
32 1036, 1039, 895 P.2d 1229, 1232 (Ct. App. 1995). Therefore, since the Court could not and did

1 not get the issues of material facts straight and conflicted itself, then the Nickersons did not and  
2 could not receive a just judgment and must be granted relief from judgment.

3 5. The Court made a mistake because it did not require PHH to produce the note or  
4 prove they were entitled to enforce it according to Idaho law. I.C. § 28-3-307(2) states, "...a  
5 plaintiff producing the instrument is entitled to payment if the plaintiff proves entitlement to  
6 enforce the instrument under section 28-3-301." PHH did not prove they were in possession of  
7 the Nickerson's Note by producing it nor did they prove they were entitled to enforce it. I.C. §  
8 28-3-301. "Person entitled to enforce" an instrument means (i) the holder of the instrument, (ii)  
9 a nonholder in possession of the instrument who has the rights of a holder, or (iii) a person not in  
10 possession of the instrument who is entitled to enforce the instrument pursuant to section 28-3-  
11 309 or 28-3-418(4)." PHH has not proven they are the "holder" of the note. I.C. § 28-1-  
12 201(b)(21)(A) defines holder as "The person in possession of a negotiable instrument that is  
13 payable either to bearer or to an identified person that is the person in possession." PHH has not  
14 provided any evidence to prove they are in possession of the Nickerson's Note, PHH did not  
15 produce the Nickerson's Note, and PHH did not prove the Nickerson's Note is either payable to  
16 bearer or to them. Thus, PHH did not provide sufficient evidence to support their claim they hold  
17 the note and it is against the law not to require them to do so.

18 "Movant must show that it has an interest in the relevant note, and that it has been injured  
19 by debtor's conduct (presumably through a default on the note). Such is necessary to  
20 establish constitutional standing.

21 ...  
22 In conclusion, Movants have failed to establish they possess the notes at issue. For this  
23 reason alone, the Court can, and will, deny their motions.

24 ...  
25 Because Movants failed to establish possession and an ownership interest in the notes,  
26 they are not shown to be the real party in interest, and they lack standing to bring the  
27 motions." *In re Wilhelm*, 407 B.R. 392, 398 (Bankr. D. Idaho 2009).

28 Therefore, since PHH did not prove possession, did not prove it was entitled to enforce  
29 and did not produce the original note, but instead, presented copies of two differing "original"  
30 notes (See Complaint Exhibit C and *Affidavit of Charles Nickerson in Support of Motion for*  
31 *Relief from Judgment*, Exhibit 3), judgment in PHH's favor must be reversed and judgment in  
32 favor of the Nickersons must be granted.

6. This Court made a mistake by not allowing or otherwise considering the Nickersons  
factual allegations of fraud. In the Nickersons Motion for Summary Judgment and its supporting

1 affidavit, the Nickersons expounded upon the issue of fraud. It was and is the Court's  
2 responsibility to make sure the Nickersons were and are given the opportunity to be fully heard  
3 and allowed to present their case as demonstrated by case law, supported by sound reason and in  
4 the interest of justice.

5 "In response to plaintiff's motion for summary judgment, the defendant filed an affidavit  
6 alleging fraud on the part of the plaintiff. The court below concluded that the defendant  
7 might be able to establish the necessary elements of fraud and therefore ordered that "if  
8 Defendant files an amended answer properly setting up such defense within ten days, and  
9 leave is hereby granted therefor, then the motion for summary judgment must  
accordingly be denied."

10 ...  
Bistline, Justice, specially concurring.

11 While I agree in affirming, I believe it of sufficient importance to state my view that the  
12 submission of an affidavit in response to a motion for summary judgment may, and  
13 ordinarily does, suffice to introduce an issue without a formal amendment to the  
14 complaint, answer, or cross-complaint — as the case may be.

15 ...  
The court in *Griffeth v. Utah Power & Light Co.*, 226 F.2d 661 (9th Cir.1955), aptly  
16 stated that "[u]nder pre-trial or summary judgment procedure, the affidavits serve the  
17 same purpose as the allegations of the pleading. Here the affidavit ... was an extension of  
18 the answer." *Id.* at 670. *McKee Bros., Ltd. v. Mesa Equipment, Inc.*, 102 Idaho 202, 628  
P.2d 1036 (1981).

19 This Court's only excuse for not considering the Nickersons allegations of fraud is  
20 because they were not raised in the pleadings. Clearly, as evidenced in *McKee Bros., Ltd. v.*  
21 *Mesa Equipment, Inc.*, according to the Idaho Supreme Court, that was a mistake. The  
22 Nickersons should have been given the opportunity to amend their pleadings to include fraud.  
23 Therefore, since the Court denied the Nickersons the opportunity to present their case regarding  
24 fraud, the Court made a mistake and must provide the Nickersons relief from judgment.

25 7. This Court made a mistake by not considering the documents the Nickersons  
26 submitted after the Summary Judgment hearing. During the hearing the Court instructed the  
27 Nickersons to provide these documents and even provided the address to send them to. For the  
28 Court to then state he refused to consider them is an extreme injustice and violated the  
29 Nickersons' rights to due process. Obviously, the Nickersons proceeded as if the Court were  
30 considering the documents and would provide opportunity for the issues raised to be addressed.

31 "\*\*\*\*"The fundamental requisite of due process of law is the opportunity to be heard."  
32 *Grannis v. Ordean*, 234 U.S. 385, 394, 34 S.Ct. 779, 783, 58 L.Ed. 1363, [1368]. This

1 right to be heard has little reality or worth unless one is informed that the matter is  
2 pending and can choose for himself whether to appear or default, acquiesce or contest.

3 \*\*\*\*\*

4 'An elementary and fundamental requirement of due process in any proceeding which is  
5 to be accorded finality is notice reasonably calculated, under all the circumstances, to  
6 apprise interested parties of the pendency of the action and afford them an opportunity to  
7 present their objections. (Citations). The notice must be of such nature as reasonably to  
8 convey the required information,\*\*\*and it must afford a reasonable time for those  
9 interested to make their appearance. (Citations)' 339 U.S. 306, 70 S.Ct. at page 657, 94  
10 L.Ed. at page 873." *Roos v. Belcher*, 79 Idaho 473, 321 P.2d 210 (1958).

11 Since the Court did not inform or provide notice to the Nickersons that the documents  
12 and evidence would not be considered, but instead proceeded by issuing a final judgment, the  
13 Court denied the Nickersons rights to protect and keep their property and of due process  
14 guaranteed by the Constitution of Idaho Art. 1 §§ 1 and 13. The documents and evidence  
15 submitted by the Nickersons provided more details regarding the following issues: a) the  
16 Nickersons' desire and intention to amend their pleadings, b) the mishandling of the case by the  
17 Nickersons' former counsel John Mitchell, c) Chase's and PHH's improper and unlawful use of  
18 the depositions, d) PHH's purposeful misrepresentations regarding the Idaho Supreme Court's  
19 rulings regarding pleading fraud and the difference between Mortgages and Deeds of Trust, e)  
20 the fraud perpetrated by PHH and Chase against the Nickersons and this Court, f) the fact the  
21 Idaho Supreme Court has determined fraud vitiates everything, g) the fact the alleged default was  
22 disputed and was wrong and the evidence clearly shows there was and is no default, h) the fact  
23 the second affidavit of Ron Casperite is not properly notarized, and i) the fact Chase claims to  
24 own the Nickersons' Note not PHH, and thus, PHH has no right, authority or any legal standing  
25 to foreclose. All of these issues were in the Court's chambers and were also raised at the  
26 Summary Judgment hearing, and should have been addressed prior to issuing a final judgment so  
27 this case could be fully adjudicated. Clearly, in the interest of justice it was a mistake for the  
28 Court to ignore these issues and by doing so provides clear evidence this court is prejudiced  
29 against the Nickersons. Therefore, because the Court mistakenly ignored the evidence and  
30 genuine issues of material fact the Court must grant the Nickersons relief from judgment.

31 8. The Nickersons request relief from judgment or order because of their alleged  
32 mistake in not submitting their Motions for Reconsideration and a Motion for New Trial on time.  
As the Nickersons have testified, they were of the understanding they had 3 extra days to file  
their motions because they were served notice of the Court's judgment by mail per I.R.C.P.  
6(e)(1). However, the Court has instructed the Nickersons that according to its interpretation of

1 the rules it was a mistake to take the extra 3 days and denied their motions due to timeliness.  
2 Therefore, because of this alleged mistake the Nickersons were denied the opportunity for  
3 reconsideration, not because of the merits of their case but due to alleged timeliness alone, and  
4 request the Court to provide relief from judgment and reopen their case.

5 9. The Nickersons request relief from judgment or order because they mistakenly  
6 thought and understood they would have been provided with the opportunity and instruction to  
7 amend their pleadings prior to any final judgment being rendered especially since the Nickersons  
8 had notified the Court they intended to do so. However, even after knowing the Nickersons  
9 wanted to amend their pleadings the Court issued a final judgment and then refused to consider  
10 the amended pleadings simply because of timing – the amendments were filed after the Court  
11 unexpectedly entered a final judgment in lieu of summary judgment. This Court has chosen to  
12 ignore the Idaho Supreme Court and U.S. District Court in Idaho who have ruled timing is not  
13 the most important factor in considering amendments. In *Carl H. Christensen Family Trust v.*  
14 *Christensen*, the Idaho Supreme Court ruled:

15 “In *Smith v. Great Basin Grain Co.*, 98 Idaho 266, 561 P.2d 1299 (1977), the plaintiff’s  
16 amended their complaints after defendants moved for summary judgment. *Id.* at 272, 561  
17 P.2d at 1305. Although the amended complaints reflected a new legal theory, this Court  
18 noted that there was no prejudice to the defendants ‘since the basic facts giving rise to a  
19 right of recovery remain unaltered.’ *Id.*

20 The time between filing the original complaint and the amended complaint is not  
21 decisive. See *Clark v. Olsen*, 110 Idaho at 324-26, 715 P.2d at 994-96 (where seven years  
22 separated original and amended complaints and defendants had moved for summary  
23 judgment, denial of motion to amend without justifying reason was abuse of discretion).”  
24 *Carl H. Christensen Family Trust v. Christensen*, 133 Idaho 866, 993 P.2d 1197 (1999).

25 The U. S. District Court, D. Idaho, has ruled:

26 “In this Circuit, ‘plaintiffs may seek amendment after an adverse ruling, and in the  
27 normal course district courts should freely grant leave to amend when a viable case may  
28 be presented.’ *Lipton v. Pathogenesis Corp.*, 284 F.3d 1027, 1039 (9<sup>th</sup> Cir. 2002).” *Brown*  
29 *v. Miller Brewing Co.*, No. 1: 12-cv-00605-REB (D. Idaho Jan. 17, 2014)

30 In order for justice to be served and a final resolution to this case determined, the  
31 Nickersons’ amendments must be considered. Therefore, because the Nickersons made the  
32 honest mistake of believing they would be given an opportunity to amend their pleadings prior to  
a final judgment being rendered and that the case would then be adjudicated on the merits, the  
Nickersons should be granted relief from judgment and the case reconsidered.

### SURPRISE



1           1. The Nickersons were surprised that a summary judgment hearing had taken place in  
2 November 2012, and a reconsideration hearing took place in early 2013. The Nickersons had no  
3 knowledge of these hearings and thus, were prevented from providing any input, affidavits,  
4 personal testimony or other evidence to refute Chase's and PHH's claims. In fact, the Nickersons  
5 were not even aware that PHH had finally provided their discovery responses that were due by  
6 August 31, 2012, and had not yet been provided prior to the deposition fiasco that occurred in  
7 early October 2012. Since the Nickersons were prevented from participating in any way in those  
8 hearings (See *Affidavit of Charles Nickerson in Support of Motion for Relief from Judgment*,  
9 Exhibit 8), this Court must grant relief from judgment and permit the Nickersons to be heard.

10           2. The Nickersons were surprised that their attorney had withdrawn from the case and  
11 were surprised by the status of case. Mr. Mitchell did not notify the Nickersons that he had  
12 withdrawn from the case. John Mitchell was in contact with the Nickersons from February 2013  
13 until August 2013 when the Nickersons were notified by Tom Clark of Clark & Feeney that John  
14 had withdrawn from the case. The Nickersons found out later that John had resigned and quit  
15 law. The Nickersons had been told by John that the case was being appealed and that he had  
16 been working with the FBI, Idaho Attorney General and other law enforcement and regulatory  
17 agencies regarding an investigation of the excessive and rampant fraud and criminal activity  
18 surrounding this case (See *Affidavit of Charles Nickerson in Support of Motion for Relief from*  
19 *Judgment*, Exhibits 8 and 9). However, the Nickersons soon found out that an appeal of their  
20 case was not filed. Shortly thereafter, the Nickersons were surprised again by PHH filing for  
21 another attempt at summary judgment. The Nickersons were of the understanding that a status  
22 hearing was going to be conducted in which the Nickersons would be able to let the Court know  
23 that they wanted to amend their pleadings, seek reconsideration of the prior summary judgment  
24 rulings and attempt to find justice in this case. None of which occurred because the Court and  
25 PHH immediately sought summary judgment. Due to the surprise status of their case the  
26 Nickersons were unable to fully prosecute their case based on the merits and therefore, this Court  
27 must grant relief from judgment.

#### 28                           **EXCUSABLE NEGLECT**

29           The Nickersons claim excusable neglect due to the fact they relied solely on their  
30 attorney, John Mitchell, the reputation and promised involvement and oversight of his firm,  
31 Clark & Feeney, and their ability to enforce the judicial integrity, prudence and oath of office  
32 sworn to by Clearwater County District Court Judge Michael Griffin to defend them, to ensure

1 their equal access to justice and to cause opposing counsel to abide by their attorney oath's and  
2 the Idaho Rules of Professional Conduct. The Nickersons had no reason to question this reliance  
3 until the time they found out John Mitchell had withdrawn from the case, quit practicing law, not  
4 presented the status of the case accurately, and that the judge had apparently ignored and was  
5 ignoring his judicial responsibility to stop the injustices they had suffered and were suffering.  
6 The Nickersons provided documentation, evidence and testimony to their attorney regarding  
7 fraud, breach of contract, breach of covenant of good faith and fair dealing, RESPA violations  
8 and numerous other defenses and causes of action and the damages that were being caused by  
9 PHH and Chase. The Nickersons attorney assured them everything was being taken care of, that  
10 it was an open and shut case, and that the Nickersons were not to worry or concern themselves  
11 with the case at all. He did not inform the Nickersons of nor solicit their input or testimony for  
12 the summary judgment proceedings that took place in 2012 and 2013. Instead he told the  
13 Nickersons everything was OK and that an appeal was in progress (see *Affidavit of Charles*  
14 *Nickerson in Support of Motion for Relief from Judgment*, Exhibits 8 and 9). Therefore, the  
15 Nickersons claim excusable neglect for relying solely upon the honesty, sobriety and impartiality  
16 of the Idaho Judicial process which neglected to protect the Nickersons, their rights and their  
17 opportunity to be heard. The Nickersons request this Court reverse its unlawful and prejudicial  
18 judgment and exhibit genuine humility, judicial integrity, and impartiality by granting immediate  
19 relief to the Nickersons.

20 **I.R.C.P. 60(b)(2)**

21 *Newly discovered evidence which by due diligence could not have been discovered in time to*  
22 *move for a new trial under Rule 59(b).*

23 1. In response to a RESPA QWR, Chase stated, "We are not required to produce the  
24 **original note which will remain in our possession...** The investor for this loan is JPMorgan  
25 **Chase Bank, National Association.**" (emphasis added) See *Affidavit of Charles Nickerson in*  
26 *Support of Motion for Relief from Judgment*, Exhibit 1. This evidence irrefutably denies PHH's  
27 standing to foreclose and provides a basis for determining PHH maliciously pursued a wrongful,  
28 fraudulent foreclosure against the Nickersons. Since the Court already had this evidence in its  
29 chambers prior to rendering judgment but ruled it was presented too late, it also demonstrates  
30 this Court has an extreme prejudice against the Nickersons which evidently precludes the  
31 Nickersons from getting justice in this Court. This evidence requires this Court to immediately  
32 grant relief from judgment because PHH has no authority, right, or standing to pursue

1 foreclosure against the Nickerson's property. Instead of continuing to ignore this evidence and  
2 standing by a prejudicial judgment, this Court should hold PHH and Chase and their counsels of  
3 record accountable for making a mockery of the Idaho Judicial system.

4 In addition, included in Chase's QWR response Chase provides an assignment of record  
5 which is the assignment from Coldwell to Chase. Further, Chase does not provide the alleged  
6 assignment from Chase to PHH which confirms that alleged assignment never occurred and that  
7 Chase still holds and owns the Nickerson's Note and Mortgage as they claim in their QWR  
8 response.

9 2. PHH's response to a RESPA QWR provided some very conflicting and perhaps  
10 incriminating information (see *Affidavit of Charles Nickerson in Support of Motion for Relief*  
11 *from Judgment*, Exhibit 2). First, PHH does not claim to be the owner of the Note nor to be the  
12 investor. If PHH does not even claim to own the Note, how can they proceed with a foreclosure  
13 against the Nickersons and make a mockery of this Court and its proceedings. As a matter of  
14 law, they cannot. Second, PHH claimed the assignment of record is the assignment in which  
15 Coldwell assigns interest to Chase which means PHH is stating Chase owns the Note and  
16 Mortgage. Conspicuously missing from PHH's records, and of which there is no mention or  
17 production is the alleged assignment from Chase to PHH. PHH is now admitting Chase has all  
18 interest in the Note and Mortgage and that they do not have any interest at all. Third, PHH  
19 presents Mortgage Service Center as a separate legal entity. Although the Nickersons were aware  
20 of the Mortgage Service Center, they did not realize that the Mortgage Service Center PHH used  
21 was not just a name to represent their servicing department, but was a separate legal entity from  
22 PHH. PHH's response states, "Documentation enclosed show Mortgage Service Center is the  
23 entity servicing the loan." Last, and perhaps most disturbing and possibly incriminating is PHH  
24 provides a copy of the Note (*Affidavit of Charles Nickerson in Support of Motion for Relief from*  
25 *Judgment*, Exhibit 3 – purported to be a copy of the original Note because the QWR specifically  
26 requests a copy of the original Note). However, this copy of the Note is nothing like the copy  
27 PHH provided in their complaint (Complaint Exhibit C) which has markings, numbers and  
28 circles on the face of it. This is very alarming and disturbing. How can there be three original  
29 notes? There cannot be. PHH has provided two differing versions and Chase claims they actually  
30 have it in their possession. These material facts alone provide sufficient evidence to dismiss  
31 PHH's claim and require relief from judgment.  
32

1 The important facts to make note of here are 1) Chase claims to be in possession of the  
2 Nickerson's Note, 2) PHH does not claim to be in possession or hold the Nickerson's Note, 3)  
3 Chase and PHH both claim the assignment of record is the assignment from Coldwell to Chase,  
4 4) Neither Chase nor PHH provided the assignment from Chase to PHH, and 5) PHH provides a  
5 different "original" note. (See *Affidavit of Charles Nickerson in Support of Motion for Relief*  
6 *from Judgment*, Exhibits 1, 2, and 3). I.C. § 45-911. **Assignment of debt carries security.** "The  
7 assignment of a debt secured by mortgage carries with it the security." This Idaho law confirms  
8 the long held and established principle that in order for one to have beneficial interest in the  
9 Mortgage one must hold the debt (Note). Thus, PHH cannot claim to hold or have beneficial  
10 interest in the Nickerson's Mortgage because all evidence proves they do not hold the Note.  
11 Therefore, as a matter of law, judgment in favor of PHH must be reversed and judgment in favor  
12 of the Nickersons entered.

13 Just to be perfectly clear, both PHH and Chase provided as a part of their QWR response  
14 an assignment which is the assignment from Coldwell to Chase. Just to be perfectly clear, neither  
15 Chase nor PHH provided the assignment from Chase to PHH. Just to make it clear the  
16 assignment from Chase to PHH is fraudulent, completely false, forged, and fabricated. Just to  
17 make it clear, Chase, PHH and/or Just Law broke the law and committed a felony offense by  
18 filing the fraudulent assignment from Chase to PHH in the Clearwater County land records. Just  
19 to be clear, Chase, PHH and Just Law violated I.C. § 18-3203 - Offering False or Forged  
20 Instrument for Record by recording instrument number 214459 – the assignment of note and  
21 mortgage from Chase to PHH. Just to make it clear, this Court must not ignore, turn a blind eye  
22 or a deaf ear to a felony offense. Just to make it clear, this Court must take action and report this  
23 crime to the proper authorities. Just to make it clear, it is time for this Court to uphold and obey  
24 the Idaho Judicial Canon. "A judge shall be faithful to the law..." Just to make it clear, according  
25 to both PHH and Chase, PHH does not hold or own the Nickerson's Note and Mortgage. Just to  
26 make it clear, PHH has no right to foreclose on the Nickersons property and those supporting or  
27 facilitating their attempts to foreclose are accomplices, agents and co-conspirators and it is our  
28 intention to pursue all legal remedies available to ensure they are held accountable for their  
29 involvement and their reign of terror on innocent homeowners is stopped.

30 3. In response to the Nickersons inquiry regarding the validity of the notarization on the  
31 Second Affidavit of Ronald E. Casperite, James Zombeck, Notary Unit Supervisor for the State  
32 of New Jersey Department of Treasury, stated in a letter (See *Affidavit of Charles Nickerson in*

1 *Support of Motion for Relief from Judgment*, Exhibit 4), "Upon review of the SECOND  
2 AFFIDAVIT OF RONALD E. CASPERITE that you provided, it is apparent that the  
3 notarization is invalid. It lacks the signature of the Notary Public." Mr. Zombeck then referenced  
4 NJSAS 52:7-19 which states, "Each notary public, **in addition to subscribing his autograph**  
5 **signature** to any jurat upon the administration of any oath or the taking of any acknowledgment  
6 or proof, shall affix thereto his name in such a manner and by such means, including, but not  
7 limited to, printing, typing, or impressing by seal or mechanical stamp, as will enable the  
8 Secretary of State easily to read said name." (emphasis added). Clearly, the State of New Jersey  
9 considers the notarization on this affidavit to be invalid. Therefore, Idaho and this Court should  
10 as well, and thus, the judgment in favor of PHH must be reversed because PHH has no affidavit  
11 or other evidence to rely upon to support its motion for summary judgment, and the Nickersons  
12 must be granted relief from judgment.

13 4. The officer in charge of the depositions did not follow the rules of civil procedure  
14 regarding the depositions (See *Affidavit of Charles Nickerson in Support of Motion for Relief*  
15 *from Judgment*, Exhibit 5) and neither did PHH and Chase. I.R.C.P. 30(e) requires the deposition  
16 to be submitted to the witness for changes and signature and provides the witness 30 days to  
17 make those changes and sign. However, this never occurred and the officer in charge never  
18 signed them or stated on the record why the Nickersons did not sign the depositions. In addition,  
19 Chase and PHH violated this rule by submitting the depositions as evidence in their motions for  
20 summary judgment just 9 and 12 days after the depositions were taken. Also, the officer in  
21 charge of the depositions violated Rule 30(f)(3) by not filing a notice with the Court that the  
22 depositions transcripts were completed and mailed. Therefore, under Rule 32(d)(4) the  
23 Nickersons depositions should be suppressed and stricken from the record and all orders or  
24 decisions which relied upon those depositions must be reversed and relief from judgment must  
25 be granted.

26 5. The depositions in no way represent, reflect, characterize or accurately depict the  
27 answers, spirit, intent or presentation of the facts provided the Nickersons nor were the  
28 depositions obtained, prepared or presented, legally, honorably, accurately or ethically.

29 **I.R.C.P. 60(b)(3).**

30 *Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other*  
31 *misconduct of an adverse party.*

32 **FRAUD**

*fraus omnia vitiat* – fraud vitiates everything

Fraud is rampant in the record before the Court and is thoroughly detailed and pled in the Nickersons newly amended answer, counterclaim and third party complaint. (See Affirmative Defenses Sections 14, 22, and 26 and Counterclaim Causes of Action 2, 3, and 22)

“Tusch Enterprises directs the court's attention to *Faw v. Greenwood*, 101 Idaho 387, 613 P.2d 1338 (1980), and argues that the elements of misrepresentation outlined therein have been satisfied. The elements are as follows: ‘(1) a representation; (2) its falsity; (3) its materiality; (4) the speaker's knowledge of its falsity or ignorance of its truth; (5) his intent that it should be acted on by the person and in the manner reasonably contemplated; (6) the hearer's ignorance of its falsity; (7) his reliance on the truth; (8) his right to rely thereon; and (9) his consequent and proximate injury.’ *Id.*, at 389, 613 P.2d at 1340, quoting *Mitchell v. Siqueiros*, 99 Idaho 396, 401 P.2d 1074, 1079 (1978). We do not believe Tusch Enterprises' misrepresentation claim should be analyzed only with reference to the elements recited in *Faw*, *supra*...

To say that all fraudulent misrepresentation must fit within *Faw*'s nine-element formulation misconstrues the very nature of fraud. ‘Fraud vitiates everything it touches. It is difficult to define; there is no absolute rule as to what facts constituted [sic] fraud; and the law does not provide one ‘lest knavish ingenuity may avoid it.’ *Massey-Ferguson, Inc. v. Bent Equipment Company*, 283 F.2d 12, 15 (5th Cir.1960). ‘[T]he law does not define fraud; it needs no definition; it is as old as falsehood and as versable as human ingenuity.’” *Id. Tusch Enterprises v. Coffin*, 113 Idaho 37, 740 P.2d 1022 (1987).

The Nickersons contend, and are supported by the Idaho Supreme Court, that the nine elements of fraud are not necessary to prove fraud, nevertheless, all nine elements of fraud are present in this case in more than one instance.

1. PHH and Chase committed fraud by not telling the truth regarding the chain of title as evidenced in the following 9 elements of fraud:

1) Statements of fact – PHH, Coldwell, Chase and Just Law represented PHH to be the holder and owner of the Nickerson's Note and Mortgage by stating a) Coldwell sold the loan to Fannie Mae, however, there is no record of this transfer in the Clearwater County land records, nor has any assignment been presented, b) Coldwell assigned (sold) the loan to Chase, c) Fannie Mae transferred the loan to PHH, d) Chase never owned the loan, and e) Chase assigned (sold) the loan to PHH.

2) Its falsity – a) Coldwell could not both sell the loan to Fannie Mae, and then subsequently assign (sell) the loan to Chase. b) There is no record of transfer from Fannie Mae to PHH and no allonges on the Note from Fannie Mae to PHH and Fannie Mae claims to have terminated their interest in the loan on December 3, 2009. c) Chase did not and could not assign the loan to PHH because Chase has claimed they did not own the

1 loan. However, in contradiction, the evidence demonstrates Chase claims to have  
2 purchased the loan on December 3, 2009, which is the same date Fannie Mae terminated  
3 their interest in the loan, and Chase claims to still own the loan as of January 10, 2014,  
4 which, in effect, has the same result – Chase did not assign the Nickerson's Note and  
5 Mortgage to PHH. Therefore, the entire chain of assignment presented by Chase and  
6 PHH is false. See *Affidavit of Charles Nickerson in Support of Motion for Relief from*  
7 *Judgment*, Exhibits 6 and 7.

8 3) Its materiality – PHH had to prove its status as owner and Note holder in order  
9 to foreclose.

10 4) The speaker's knowledge of its falsity – PHH knows it is not the owner and  
11 holder of the Note and Mortgage because in their response to a QWR they do not claim to  
12 be and they claim the assignment of record is the assignment that transferred all interest  
13 from Coldwell to Chase. In addition, PHH never sent a Notice of New Creditor to the  
14 Nickersons informing them that PHH was the owner and holder of the Note and  
15 Mortgage, as required by federal law, and PHH has not produced the original Note and  
16 Mortgage.

17 5) The speaker's intent to induce reliance – PHH has filed a complaint for  
18 foreclosure intending and in hopes that not only should the Nickersons simply and at face  
19 value rely on their falsified facts, allegations, and claims, but that the Court, future buyers  
20 and the world at large should as well.

21 6) The hearer's ignorance of the falsity – The Nickersons and the Court really had  
22 no way of knowing the falsity without extensive and oppressive investigation.

23 7) Reliance by the hearer – The Nickersons and the Court had to rely on, work  
24 with and sift through the representations, statements, facts, allegations and claims  
25 presented by PHH. The Nickersons were ignored and prevented from challenging PHH  
26 and had to go through this entire process at great personal loss and trauma because of the  
27 reliance on the illegitimate claims to ownership. The Nickersons did not fully discover  
28 the extensiveness of their falsities until contacting Fannie Mae and Chase and conducting  
29 an investigation to stop their abusers.

30 8) The hearer's right to rely – The Nickersons are fighting to save their property  
31 from foreclosure and should be able to ethically, morally and legally rely on PHH's  
32 representations that they own the Note and accept their responsibilities and demonstrate

1 proper regard for their obligations to practice fair debt collection, avoid predatory lending  
2 practices, follow all regulatory guidelines, and any other such reliance that a reasonable  
3 person could expect to rely upon.

4 9) Consequent and proximate injury – Foreclosure. The Nickersons irreparable  
5 loss of their investment in the property and the loss of years of hard work in building up  
6 and establishing equity and memories in their property. Comprehensive and trauma losses  
7 incurred fighting and enduring the foreclosure process. Extreme emotional distress  
8 caused by having to fight this senseless struggle that has stolen years of life, liberty and  
9 happiness. Comprehensive damages being suffered because of the foreclosure.

10 2. The Nickersons have documented over 100 discrepancies, falsehoods,  
11 misrepresentations and contradictions that PHH presented to the Court as true. Fraud is present  
12 in nearly every communication, document, account history, and filing in this action, and starts at  
13 the very root of the relationship between Coldwell Banker and the Nickersons. PHH, Chase,  
14 Coldwell Banker, Moffatt Thomas and Just Law have perpetrated fraud on the Court, the  
15 Nickersons and the world at large. See the Nickersons newly amended answer affirmative  
16 defenses sections 14, 22 and 26, and counterclaim and third party complaint causes of action 2,  
17 3 and 22.

18 3. PHH committed fraud by not proving the default amount claimed in their complaint  
19 and did not prove a default existed at all. PHH originally claimed a default of 14 months.  
20 However, in Ron Casperite's second affidavit, which has been proven to contain notary fraud  
21 and does not qualify as admissible evidence, he presents a misleading and misrepresentative  
22 illustrative account history which paints a false picture regarding the transactions that have  
23 occurred because he did not include all of the data provided by Chase, and he claims a default of  
24 only 9 months. If the default was only 9 months, then PHH's original claim of 14 months was  
25 inaccurate and fraudulent and proves PHH's records were and are inaccurate. PHH should have  
26 been and must be required to prove up the exact default which they originally claimed, relied on  
27 and forced the Nickersons case to proceed on. Anything else is an admission their records were  
28 and are inaccurate and cannot be relied upon. In addition, the records used to allege default show  
29 a principal balance of \$0.00 in November 2009, long before the account servicing was  
30 transferred to PHH, indicating no debt is owed (See *Affidavit of Brandie S. Watkins*, Exhibit F).  
31 Chase, not the Nickersons, submitted evidence that the principal balance on the Nickersons  
32 account was \$0 in November of 2009 and \$-1,186.90 on January 21, 2010. This Court has totally



1 ignored the fact Chase's account records indicate right there in black and white, there is no debt.  
2 However, the Court is allowing PHH to use these same account records to claim the Nickersons  
3 missed 14 and then 9 monthly payments during the time Chase had the account. It is  
4 contradictory and extremely prejudicial to the Nickersons to allow PHH to claim Chase's  
5 account records are accurate enough to prove 9 missed payments and yet say the account records  
6 are inaccurate to prove there is no debt. Chase and PHH, not the Nickersons, submitted this  
7 account record. If the Court is going to ignore the fact that the principal balance on this account  
8 record shows \$0 in November 2009 and \$-1,186.90 in January of 2010, then this Court is ruling  
9 Chase's account records are wrong and cannot accept PHH's alleged default and must reverse  
10 judgment. Since Chase is claiming this is the account history of record, then, in this land of fair  
11 play, this Court has no option but to accept the fact the account history demonstrates there is no  
12 debt, and thus, no default, and must reverse judgment in favor of PHH and grant judgment in  
13 favor of the Nickersons.

14 4. Coldwell committed fraud in the factum by filing a Deed of Trust and not a  
15 Mortgage. Black's Law Dictionary defines fraud in the factum as "Fraud occurring when a legal  
16 instrument as actually executed differs from the one intended for execution by the person who  
17 executes it, or when the instrument may have had no legal existence." At the closing table,  
18 Coldwell presented a security instrument to the Nickersons. The Nickersons and the closing  
19 agent informed Coldwell that only a Mortgage could be used on this property because of its size,  
20 fifty (50) acres, and its location, and that the Nickersons were only willing to use a Mortgage to  
21 secure the property. Coldwell assured the Nickersons and the closing agent both verbally and in  
22 writing that the Nickersons were getting a Mortgage and that it was the type of Mortgage that  
23 provided the additional security the Nickersons had previously discussed at great lengths with  
24 Coldwell. Subsequently, however, Coldwell apparently filed and recorded the security  
25 instrument with the content and title of Deed of Trust in the County records which was a  
26 document that actually differs from the one intended for execution and executed by the  
27 Nickersons and, in reality, had no legal existence. According to the Idaho Supreme Court, the  
28 fact Coldwell represented to the Nickersons and the closing agent that the Deed of Trust was  
29 really a Mortgage vitiates the presented Deed of Trust. "[A]greements and communications  
30 prior to or contemporaneous with the adoption of a writing are admissible in evidence to  
31 establish fraud." Tusch Enterprises v. Coffin, 113 Idaho 37, 45 n. 5, 740 P.2d 1022, 1030 n. 5  
32 (1987), Mikesell v. Newworld Development Corp., 122 Idaho 868, 876, 840 P.2d 1090, 1098

1 (Ct.App.1992). Fraud vitiates the specific terms of the agreement and can provide a basis for  
2 demonstrating that the parties agreed to something apart from or in addition to the written  
3 documents.” *Aspiazu v. Mortimer*, 139 Idaho 548, 82 P.3d 830 (2003).

4 In addition, Coldwell intentionally falsified the documents and mischaracterized the  
5 property and the information contained therein to presumably sell the Nickersons loan to Fannie  
6 Mae. The Deed of Trust Coldwell and PHH present states the property size is forty (40) acres or  
7 less when the actual size of the property is fifty (50) acres. Further, Coldwell created an unlawful  
8 deed of trust to mischaracterize the property it was securing even though legally only a mortgage  
9 could be used to secure the Nickersons fifty (50) acre ranch. I.C. § 1502(5)(c) states deeds of  
10 trust can only be used on real property that is 40 acres or less. The Nickersons assert Coldwell  
11 did this so they could sell the Note and Mortgage to Fannie Mae. Consequently, Fannie Mae  
12 allegedly purchased the Nickersons loan based on false misrepresentations when they should not  
13 and presumably would not have.

14 Coldwell committed fraud in the factum by misrepresenting the Deed of Trust as a  
15 Mortgage in order to coerce the Nickersons into closing on the property. The Nickersons clearly  
16 and unmistakably believed they were getting a Mortgage not a Deed of Trust. The Nickersons  
17 did not knowingly or willingly grant or execute a Deed of Trust or any document that could be  
18 misrepresented as a Deed of Trust at closing. The Deed of Trust Coldwell filed in the county  
19 records is not only a document that differs from the one seen by and intended for execution by  
20 the Nickersons, but is a document that, in reality, has no legal existence at all. Therefore,  
21 according to the Idaho Supreme Court, the Deed of Trust Coldwell filed is void (see *Aspiazu v.*  
22 *Mortimer* above), and the Nickersons must be granted relief from judgment.

23 Coldwell committed fraud 1) Coldwell told the Nickersons they were securing their  
24 property with a Mortgage. 2) Deeds of trust and mortgages are not the same. Idaho code  
25 separately defines mortgages and deeds of trust. They are not functionally the same. *Frazier v.*  
26 *Neilsen & Co.*, 115 Idaho 739, 769 P. 2d 1111 (1989). 3) In order to finance the purchase of the  
27 property the Nickersons had to have a security instrument. 4) Coldwell was a very experienced  
28 mortgage lender (in the loan application packet, Coldwell states, “it’s our business – our only  
29 business”) and told the Nickersons they understood the Idaho statutes regarding Mortgages and  
30 Deeds of Trust. 5) Coldwell knew the Nickersons would only sign a mortgage so Coldwell told  
31 them the security instrument was a mortgage. 6) At that time, and because they believed  
32 Coldwell to be a nationally recognized and reputable company, the Nickersons had no reason not

1 to believe Coldwell was telling them the truth. 7) The Nickersons signed what they believed to  
2 be a Mortgage. 8) The Nickersons were closing on their new ranch. 9) As a direct and proximate  
3 result of the unconscionable, adhesive and outrageous actions and fraudulent course of conduct  
4 of Coldwell, the Nickersons have suffered damages including fighting a fraudulent, wrongful and  
5 illegal non-judicial foreclosure attempt; fighting the subsequent fraudulent and wrongful judicial  
6 foreclosure; loss of credit; higher interest rates; loss of way of life; loss of precious time;  
7 personal, professional and public humiliation and embarrassment; emotional distress and other  
8 actual and consequential damages.

9 Since the Idaho Supreme Court has held, fraud vitiates everything it touches, *Tusch*  
10 *Enterprises v. Coffin, Id*, then, as a matter of law, PHH's complaint is void and judgment in their  
11 favor must be reversed and judgment in favor of the Nickersons must be granted.

#### 12 MISCONDUCT

13 Black's Law Dictionary defines misconduct as, "Any unlawful conduct on the part of a  
14 person concerned in the administration of justice which is prejudicial to the right of parties or to  
15 the right determination of the cause; as 'misconduct of jurors,' 'misconduct of an arbitrator.' The  
16 term is also used to express a dereliction from duty, injurious to another, on the part of one  
17 employed in a professional capacity; as an attorney of law."

18 The Idaho judicial system has determined several factors that constitute misconduct  
19 which are detailed in its Rules of Professional Conduct.

20 Rule 8.4: Misconduct. "It is professional misconduct for a lawyer to: (a) violate or  
21 attempt to violate the Rules of Professional Conduct, knowingly assist or induce another  
22 to do so, or do so through the acts of another; (b) commit a criminal act that reflects  
23 adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;  
24 (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation; (d) engage  
25 in conduct that is prejudicial to the administration of justice; (e) state or imply an ability  
26 to influence improperly a government agency or official or to achieve results by means  
27 that violate the Rules of Professional Conduct or other law; or (f) knowingly assist a  
28 judge or judicial officer in conduct that is a violation of applicable rules of judicial  
29 conduct or other law."

30 The most prevalent misconduct for the lawyers in this case is section (c) – engage in  
31 conduct involving dishonesty, fraud, deceit or misrepresentation.

32 1. Kipp Manwaring and Jon Stenquist in conjunction and cooperation with each other  
and their accomplices deceived and abused the Nickersons, their attorney and this Court by  
unlawfully submitting and allowing to be submitted the alleged depositions of Charles and

1 Donna Nickerson. Opposing counsels were fully aware of the inaccuracy and incompleteness of  
2 the depositions and the legal chicanery and evil practices utilized to create this transcript full of  
3 lies and misrepresentations as presented to the Court. The aforementioned lawyers violated  
4 I.R.C.P. 30(e) and 30(f)(4)(B).

5 **I.R.C.P. 30(e) states:**

6 "When the testimony is fully transcribed the deposition shall be submitted to the  
7 witness for examination and shall be read to or by the witness, unless such examination  
8 and reading are waived by the witness and by the parties. Any changes in form or  
9 substance which the witness desires to make shall be entered upon the deposition by the  
10 officer with a statement of the reasons given by the witness for making them. The  
11 deposition shall then be signed by the witness, unless the parties by stipulation waive the  
12 signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not  
13 signed by the witness within 30 days of its submission to the witness, the officer shall  
14 sign it and state on the record the fact of the waiver or of the illness or absence of the  
15 witness or the fact of the refusal to sign together with the reason, if any, given therefor;  
16 and the deposition may then be used as fully as though signed unless on a motion to  
17 suppress under Rule 32(d)(4) the court holds that the reasons given for the refusal to sign  
18 require rejection of the deposition in whole or in part."

19 The depositions were never submitted to or read by or to the Nickersons for review or  
20 changes. The Nickersons never signed the depositions. The Nickersons never waived their rights  
21 to review, change or sign the depositions. In fact, the Nickersons were never given any  
22 opportunity to see the depositions nor did they have any knowledge the depositions or any  
23 representations or misrepresentations of their testimonies had ever been prepared. The  
24 Nickersons were never notified that any depositions had been prepared or were going to be used  
25 in any manner. In fact, at the time of the depositions, their counsel specifically told them the  
26 depositions were null and void and would not and could not be used. Thus, the Nickersons were  
27 denied their opportunity to object to the depositions and the grossly inaccurate and deceptively  
28 altered record provided because they were never notified they existed or were going to be used.  
29 Additionally, the depositions were unlawfully submitted prior to the expiration of 30 days in  
30 violation of this rule. Chase submitted the depositions as an exhibit to an affidavit filed by their  
31 attorney on October 15<sup>th</sup>, 2012, just 12 days after the taking of the depositions and PHH  
32 references the depositions in documents filed on October 12<sup>th</sup>, 2012 only 9 days after the taking  
of the depositions. Further, the depositions are inadmissible because the officer did not "sign it  
and state on the record" any reasons why the depositions were not signed by the Nickersons.  
Thus, all prerequisites and requirements for preparing and using the depositions were not met  
and the use and submission of the depositions constitutes gross misconduct by all counsels

involved. Therefore, the depositions, according to this rule should not and could not have been used or considered as evidence and any judgments or rulings which considered this inadmissible evidence must be reversed and relief from judgment must be granted.

**I.R.C.P. 30(f)(4)(B) states:**

"If a deposition, or portions thereof, are to be used at trial, or are to be used either in support of, or in opposition to, a pretrial or post-trial motion, only those portions to be used shall be submitted to the court at the outset of the trial or at the filing of the motion or response thereto, insofar as their use can be reasonably anticipated by the party seeking to introduce such evidence. For purposes of this Rule, and unless a genuine issue of authenticity is raised, a moving party need not produce the original transcript, but may rely on the submission of relevant excerpts from copies of the original transcript."

Opposing counsels violated this rule by submitting the entire deposition and ignored the requirement that "only those portions to be used shall be submitted to the court." The Nickersons contend this created undue and unfounded prejudice of the Court toward the Nickersons and clearly they have suffered and have been prevented from obtaining equal access to justice as a result. No portion of the transcript should have been submitted to the Court or considered by the Court without the Nickersons having opportunity to review and challenge its authenticity because the depositions entered were not lawfully taken, did not reflect a true recording of the testimony presented and could not be used at trial. Opposing counsel submitted the entire deposition and clearly violated this rule. Therefore, the misconduct of opposing counsel unlawfully submitting the depositions requires the depositions not be considered and all judgments or rulings which considered the depositions must be reversed and relief from judgment must be granted.

Additionally, the counsels committed gross misconduct by not requiring the officer in charge of the depositions to follow through with their lawful requirements.

**I.R.C.P. 30(f)(1)(A) states:**

"The officer shall certify on the transcript of the deposition that the witness was duly sworn by the officer and that the transcript is a true record of the testimony given by the witness. The officer shall then securely seal the transcript in an envelope or package indorsed with the title of the action and marked "Deposition of (here insert the name of witness)" and shall then promptly transmit it to the attorney for the party who noticed the deposition and for whom the deposition was taken. This attorney shall store the transcript under conditions that will protect it against loss, destruction, or tampering."

Although there is a reporter's certificate present with the transcript, the transcript entered in the record is not signed by the reporter, and thus, is not a valid certification. Therefore, this rule has also been violated and the depositions must be removed from the record and any rulings

1 based on the reliance of them should be reversed. Further, the transcript entered in the record is  
2 not a true, complete and accurate record of any testimony provided. The Nickersons and their  
3 attorney made comments, clarifications and factual statements to be included on the record prior  
4 to and during the answering of questions that are not present. The omission of these statements  
5 contaminates, critically alters, and falsifies the transcript and testimonies in their entirety in a  
6 prejudicial and unlawful manner. As a matter of record, and as the Nickersons and their attorney  
7 repeatedly stated for the record, Mr. Manwaring privately provided constant instruction,  
8 direction, clarification and even wording to the transcriber as to what should be recorded and  
9 reviewed while the transcriber was recording both during his and Mr. Stenquist's questioning  
10 and throughout the countless breaks during the depositions. Subsequently, Mr. Manwaring and  
11 Mr. Stenquist fabricated and created a transcript that in NO way reflected the spirit, intent,  
12 factual answers or comments made by the Nickersons.

13 **I.R.C.P. 30(f)(3) states:**

14 "Upon completion of the transcript of the deposition and the mailing thereof to  
15 the attorney at whose request the deposition was taken, the officer who prepared the  
16 transcript shall promptly notify all parties or their attorneys that the transcript has been  
17 completed and has been mailed or otherwise delivered to said attorney. The officer who  
18 prepared the transcript shall also file with the court notice stating when the original  
19 transcript was completed and mailed, the name and address of the attorney receiving the  
20 original transcript, and the name(s) and address(es) of all person(s) receiving copies  
21 thereof."

22 The officer who prepared the transcript never filed a notice with the court "stating when  
23 the original transcript was completed and mailed, the name and address of the attorney receiving  
24 the original transcript, and the name(s) and address(es) of all person(s) receiving copies thereof."  
25 Therefore, the depositions were not filed according to I.R.C.P. 30(f)(3), among other violations,  
26 and are not admissible as evidence and must be removed from the record.

27 Since the entire deposition process was tainted with deliberate misconduct, violations of  
28 the Rules of Civil Procedure and abusive interrogation tactics, according to I.R.C.P. 47(u) the  
29 summary judgment proceedings constitute a mistrial and the Nickersons must be granted relief  
30 from judgment.

31 2. Jon A. Stenquist and Kipp L. Manwaring committed gross misconduct by violating  
32 the Idaho Attorney's Oath – "I will never seek to mislead a court or opposing party by false  
statement of fact or law, and will scrupulously honor promises and commitments made" – and  
violating I.C. § 3-201. **Duties of Attorneys. 4. To employ, for the purpose of maintaining the**

1 **causes confided to him, such means only as are consistent with truth, and never seek to**  
2 **mislead the judges by an artifice or false statement of fact or law.** Mr. Stenquist specifically  
3 sought to mislead the judge by lying about Chase's ownership of the Nickersons' Note. Mr.  
4 Stenquist lied eight times in his answers to interrogatories specifically denying Chase ever  
5 owned the Nickersons' Note and claiming Chase was a servicer only. Mr. Stenquist used this  
6 artifice to 1) mislead the judge into ruling there was no contractual relationship between the  
7 Nickersons and Chase, 2) thwart the discovery process in order to hide the truth and conceal  
8 evidence, and 3) obtain a summary judgment in Chase's favor. In addition, Mr. Stenquist made  
9 numerous other false and contradictory statements which have been detailed in the Nickersons  
10 amended counterclaim and third party complaint under the heading Contradictory Statements on  
11 page 137 beginning with paragraph 206. One glaring example is Mr. Stenquist stated the  
12 Nickerson's loan was sold to Freddie Mac and then repurchased by PHH from Freddie Mac.  
13 Those alleged facts were a complete fabrication because, as the record demonstrates, Freddie  
14 Mac had nothing to do with the Nickerson's loan. Clearly, Mr. Stenquist's misconduct and total  
15 lack of character requires this Court to grant the Nickersons relief from judgment.

16 Mr. Manwaring's misconduct is even more severe. His inability to tell the truth and get  
17 the facts straight and submission of an affidavit that contains notary fraud demonstrates a  
18 purposeful malicious contempt of the Nickersons and this Court. He claimed PHH was in  
19 possession of the Nickersons' Note but he never produced it. He claimed the Nickersons were in  
20 default but provided evidence that was contradictory and clearly false. He claimed the  
21 Nickersons did not make their payments but neglected to tell the Court the reason the payments  
22 were not made is because PHH refused to accept them. He and Just Law have filled the record  
23 with over 100 false, misleading and contradictory statements. See the Nickersons newly  
24 amended Answer Affirmative Defense Twenty-Two – Contradictory Statements beginning on  
25 page 64 paragraph 250. Mr. Manwaring's gross misconduct and total inability to tell the truth  
26 requires this Court to grant the Nickersons relief from judgment.

27 In addition, the misconduct and lack of due diligence of John Mitchell caused by personal  
28 issues the Nickersons were unaware of and Mr. Mitchell was unable to resolve, allowed  
29 opposing counsels and their accomplices to have free reign to terrorize the Nickersons and  
30 obstruct their access to justice. The Nickersons were uninformed of what was going on with their  
31 case due to no fault of their own. The Nickersons were severely handicapped in the presentation  
32 of their claims and defenses due to no fault of their own. The Court made rulings that

1 demonstrated extreme prejudice and injustice toward the Nickersons that they were unaware of,  
2 unable to reverse and that robbed the Nickersons of their right to due process due to no fault of  
3 their own. (See *Affidavit of Charles Nickerson in Support of Motion for Relief from Judgment*,  
4 Exhibit 8). Therefore, this Court must grant relief from judgment and allow the Nickersons'  
5 claims and defenses to be heard.

6 **I.R.C.P. 60(b)**

7 *This rule does not limit the power of a court to:*

8 *(iii) to set aside a judgment for fraud upon the court.*

9 Black's Law Dictionary defines fraud on the court as follows: "In a judicial proceeding, a  
10 lawyer's or party's misconduct so serious that it undermines or is intended to undermine the  
11 integrity of the proceeding."

12 1. One of the many ways PHH has committed fraud on the court is by engaging in  
13 notary fraud. The Second Affidavit of Ronald E. Casperite contains notary fraud. The notary seal  
14 is affixed to the affidavit but the notary did not sign the affidavit.

15 "A signed notarization is the ultimate assurance upon which the whole world is entitled to  
16 rely that the proper person signed a document on the stated day and place. Local,  
17 interstate, and international transactions involving individuals, banks, and corporations  
18 proceed smoothly because all may rely upon the sanctity of the notary's seal..."The  
19 proper functioning of the legal system depends on the honesty of notaries who are  
20 entrusted to verify the signing of legally significant documents.'...a false notarization is a  
21 crime and undermines the integrity of our institutions upon which all must rely upon the  
faithful fulfillment of the notary's oath." *Klem v. Washington Mut. Bank*, 295 P.3d 1179,  
176 Wash. 2d 771 (2013).

22 Because of the misconduct of PHH in submitting fraudulent documents to the court, and  
23 because the Court relied upon those fraudulent documents, the Nickersons request the Court to  
24 set aside judgment and consider any appropriate disciplinary action and or sanctions to be  
25 assessed on PHH and PHH's counsel for their fraud on the court in submitting a document that  
26 embodies a criminal act. Furthermore, since PHH's basis for proving a default rests upon Mr.  
27 Casperite's affidavit, they have no basis for default, and, as a matter of law, the judgment must  
28 be reversed and judgment in favor of the Nickersons must be granted.

29 2. PHH committed fraud on the court by a) claiming to own and hold the Nickerson's  
30 Note and Mortgage, b) pursuing this fraudulent and wrongful foreclosure, and c) presenting  
31 evidence that was false, forged, and fabricated to intentionally mislead this Court and deceive the  
32 Nickersons and the world at large. PHH, Chase and Just Law fabricated and filed instrument



1 number 214459 which is the alleged assignment of note and mortgage from Chase to PHH. This  
2 alleged assignment was not only robo-signed by Kirsten Bailey but presented a completely  
3 fabricated chain of title (According to the Massachusetts County of Essex Register of Deeds,  
4 Kirsten Bailey is a robo-signer). As detailed above in section I.R.C.P. 60(b)(2) ¶¶ 1 and 2, Chase  
5 claims to hold and be in possession of the Nickersons Note and Mortgage which completely  
6 nullifies all of PHH's claims and renders the judgment provided in favor of PHH null and void.  
7 Further, this demonstrates PHH's, Chase's and Just Law's criminal actions. Specifically, PHH,  
8 Chase and Just Law broke the law by violating I.C. § 18-3203 - Offering False or Forged  
9 Instrument for Record - which renders their action of filing this false document, the alleged  
10 assignment from Chase to PHH, a felony offense. Since PHH, Chase and Just Law not only  
11 committed fraud on the Court but committed a felony offense in the process, this Court must  
12 grant the Nickersons relief from judgment and notify the proper authorities regarding the  
13 criminal acts of PHH, Chase and Just Law.

14 3. Chase committed fraud on the court by willfully and maliciously lying to the court by  
15 claiming it never owned the Nickerson's Note and stating at least eight times that it was a  
16 servicer only (See *Affidavit of Charles Nickerson in Support of Motion for Relief from Judgment*,  
17 ¶ 7.c.) . As detailed above in section I.R.C.P. 60(b)(2) ¶¶ 1 and 2, Chase claims to hold and be in  
18 possession of the Nickersons Note and Mortgage which completely contradicts and refutes all of  
19 Chase's previous claims to have been a servicer only and nullifies all of PHH's claims and  
20 renders the judgment provided in favor of PHH and the summary judgment granted to Chase null  
21 and void.

22 4. See *Affidavit of Charles Nickerson in Support of Motion for Relief from Judgment*,  
23 Exhibit 8 in its entirety.

24 Therefore, due to the fraud on the court committed by PHH, Chase and their counsels of  
25 record, the Court must grant relief from judgment.

26 Wherefore, because of the mistakes, surprises, excusable neglect, the new evidence  
27 presented, the fraud and misconduct of PHH, Chase and the counsels of record, and fraud on the  
28 court, the Nickersons request the court to set aside the judgments on file and grant judgment in  
29 favor of the Nickersons.

30 Oral argument requested.

31 In accordance with I.R.C.P. 7(d) and I.C. § 9-1406, I certify (or declare) under penalty of  
32 perjury pursuant to the laws of the State of Idaho that the foregoing is true and correct.

DATED this 3<sup>rd</sup> day of October, 2014

  
CHARLES NICKERSON

### CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 3<sup>rd</sup> day of October, 2014, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

NOTE: Apparently Kipp Manwaring is no longer working for Just Law. However, we have not received notice from Kipp Manwaring, Just Law or the Court regarding his withdrawal nor has anyone provided information on who is now representing Just Law in this case. Therefore, we are just serving Just Law Office.

Just Law Office  
381 Shoup Ave.  
PO Box 50271  
Idaho Falls, ID 83405  
Fax (208)523-9146

☐ U.S. Mail  
☐ Hand Delivered  
☐ Overnight or Priority Mail  
☒ Facsimile

Honorable Michael J. Griffin  
Idaho County District Court  
381 West Main  
Grangeville, ID 83530  
Fax (208)983-2376

☐ U.S. Mail  
☐ Hand Delivered  
☐ Overnight or Priority Mail  
☒ Facsimile

Jon A. Stenquist  
Moffatt Thomas Barrett Rock & Fields  
PO Box 51505  
Idaho Falls, ID 83405  
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☐ U.S. Mail  
☐ Hand Delivered  
☐ Overnight or Priority Mail  
☒ Facsimile

  
Charles Nickerson

CHARLES NICKERSON AND DONNA NICKERSON  
3165 Neff Rd  
Orofino, ID 83544

Defendants Pro Se

**IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE  
OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER**

PHH MORTGAGE,

Case No.: CV 2011-28

Plaintiff/Counter-Defendant,

**AFFIDAVIT IN SUPPORT OF  
MOTION FOR RELIEF FROM  
JUDGMENT**

vs.

CHARLES NICKERSON and DONNA  
NICKERSON, husband and wife;  
KNOWLTON & MILES PLLC; WELLS  
FARGO BANK, N.A., AND JOHN DOES I  
thru X

Defendant,

COLDWELL BANKER MORTGAGE, a/d/b/a  
of PHH MORTGAGE, and JPMORGAN  
CHASE BANK, N.A.

Third Party-Defendants.

I, CHARLES NICKERSON, deposes and states:

1. I am a Defendant in the above-entitled action.
2. I am competent to testify to these matters.
3. I have denied and submitted evidence to deny all allegations of PHH in their complaint regarding foreclosure, have requested my meritorious claims be heard by this Court, have provided solid and fully supported, true and correct evidence of extensive illegal and criminal activity by PHH, Just Law, Chase and their attorneys of record to the Nickerson's attorney John Mitchell, opposing attorneys, and this Clearwater County District Court, and have invoked and demonstrated my resolute intentions to continue to invoke my claims to equal access to justice and impartial resolution in this case.

- 1 4. Jason Rammell, Charles Just, Kipp Manwaring, Bradon Howell, Tammie Harris and  
2 PHH have personal knowledge that PHH has no lawful right to foreclose on the  
3 Nickerson's loan.
- 4 5. Jason Rammell, Charles Just, Kipp Manwaring, Bradon Howell, Tammie Harris and  
5 PHH have personal knowledge of the comprehensive damages suffered by the  
6 Nickersons and have had this knowledge before, during and throughout these  
7 proceedings.
- 8 6. Jon Stenquist, Moffatt Thomas and Chase have personal knowledge that PHH has no  
9 lawful right to foreclose on the Nickerson's loan.
- 10 7. Jon Stenquist, Moffatt Thomas and Chase have personal knowledge of the  
11 comprehensive damages suffered by the Nickersons and have had this knowledge before,  
12 during and throughout these proceedings.
- 13 8. Judge Michael Griffin has personal knowledge of evidence that refutes PHH's right to  
14 foreclose, demonstrates that the Nickersons have suffered comprehensive damages based  
15 on the actions of all parties involved, and that the Nickersons' rights and access to justice  
16 have not been properly represented in his court. With this knowledge, Judge Michael  
17 Griffin granted PHH a judgment in PHH's favor.
- 18 9. I presented evidence to the Court prior to judgment being rendered that Chase not PHH  
19 claims to currently own and possess my note. See Nickersons *Notice of Supplemental*  
20 *Evidence* filed on March 7, 2014, and Exhibit 1 attached to this affidavit.
- 21 10. I presented evidence to the Court prior to judgment being rendered that the Second  
22 Affidavit of Ronald E. Casperite was invalidly notarized. See Nickersons *Objection to*  
23 *Second Affidavit of Ronald E. Casperite* filed on March 24, 2014. In addition, the Court,  
24 on its own initiative should have noticed this affidavit was improperly notarized and in  
25 keeping with the Court's duties and responsibilities to "...be faithful to the law and  
26 maintain professional competence in it." Idaho Judicial Canon 3B(2), should have  
27 disregarded this affidavit and sanctioned PHH and Just Law for submitting documents  
28 that embody a criminal act.
- 29 11. This Court allowed PHH to file a motion to amend judgment and subsequently granted  
30 the amendment when the motion was not filed in a timely manner in accordance with  
31 Rule 59(e).
- 32

1 12. The Court entered contradictory opinions regarding undisputed facts and ignored genuine  
2 issues of material fact.

- 3 a. The Court found the record indicates Chase received the note via an alleged  
4 assignment from Coldwell in November 2007. However, the Court also found that  
5 Coldwell assigned the note to Fannie Mae in 2002 (It is interesting to note that the  
6 Nickersons could find nothing in the record validating this fact other than the  
7 letter from Fannie Mae the Nickersons provided that this Court ruled was  
8 inadmissible hearsay). Thus, Coldwell could not have assigned the Note to Chase  
9 in 2007 when it had already assigned it to Fannie Mae in 2002. This is a  
10 contradiction to what is represented by the Court as an undisputed fact.
- 11 b. Chase denied they were assigned the note in 2007. See *JPMorgan Chase Bank,*  
12 *N.A.'s Answer to Third Party Complaint*, ¶ 6. This contradicts the Court's finding  
13 that Chase acquired the note in 2007.
- 14 c. In response to the Nickersons interrogatories and requests for production, Chase  
15 denies owning, purchasing or selling the Nickerson's Note eight times and claims  
16 to have been a servicer only (see *Affidavit of John Mitchell, 1/22/13, Exhibit C*).  
17 This testimony strongly contradicts what the Court has entered as an undisputed  
18 fact that Chase owned the Note from 2007 to 2010. Chase claimed they never  
19 owned the Note. Therefore, according to the record Chase presented to the Court,  
20 they could not have assigned it to PHH in June 2010 nor could they have acquired  
21 it in 2007.
- 22 i. "...JPMorgan further objects to this interrogatory as it mischaracterizes  
23 the facts, contending that JPMorgan purchased the Nickerson's note,  
24 whereas, JPMorgan was servicer of the note and not a purchaser." PAGE  
25 2, ANSWER NO. 1
- 26 ii. "...JPMorgan objects to this interrogatory because it mischaracterizes the  
27 facts, contending that JPMorgan purchased the Nickerson's note, whereas,  
28 JPMorgan was servicer of the note and not a purchaser." PAGE 3,  
29 ANSWER NO. 2
- 30 iii. "...JPMorgan, as a servicer of the loan, did not "sell" the Nickerson's  
31 note." PAGE 3, ANSWER NO. 3
- 32

- 1           iv. "...JPMorgan did not purchase, own or sell the Nickerson's note and  
2           merely acted as a servicer of the loan." PAGE 3, ANSWER NO. 4
- 3           v. "...JPMorgan further objects to this interrogatory as it mischaracterizes  
4           the facts, contending that JPMorgan was the owner of the note, in a  
5           position to determine to foreclose or not to foreclose, when in fact,  
6           JPMorgan was a servicer of the note." PAGE 4, ANSWER NO. 7
- 7           vi. "...As a servicer for the Nickerson's loan, JPMorgan is not aware of the  
8           information exchanged in the transfer/sale of the note between buyer and  
9           seller." PAGE 5, ANSWER NO. 9
- 10          vii. "...when in fact, JPMorgan was merely a servicer of the note." PAGES 5-  
11          6 ANSWER NO. 10
- 12          viii. "...JPMorgan did not purchase the Note, but was merely a servicer of the  
13          Note." PAGE 14, RESPONSE NO. 11
- 14          d. Regardless of whether Chase lied to avoid providing discovery that would  
15          incriminate their criminal activities involving the Nickerson's loan or Jon  
16          Stenquist of Moffatt Thomas was committing fraud on the Court and against the  
17          Nickersons in order to unlawfully secure a judgment in his client's favor, Chase  
18          claimed and presented to the Court they never owned the Note.
- 19          e. I have presented solid and fully supported evidence to the Court that the  
20          assignment from Chase to PHH, instrument number 214459, is not legitimate, was  
21          fraudulently prepared, and was robo-signed by a known robo-signer.
- 22          f. According to the Massachusetts County of Essex Recorder of Deeds, public  
23          record, and commonly accessible publications, Kirsten Bailey is a robo-signer and  
24          all instruments signed by Kirsten Bailey are invalid. Kirsten Bailey signed the  
25          alleged assignment from Chase to PHH presented to the Court.
- 26          g. PHH in their answers to the Nickerson's interrogatories claimed they received the  
27          Note via a transfer from Fannie Mae which contradicts what the Court has  
28          represented as an undisputed fact that PHH received the Note via an assignment  
29          from Chase. "that it held the original note through its subsidiary, Coldwell  
30          Banker. PHH believes that note was transferred to the Federal Home Mortgage  
31          Association, (Fannie Mae), which in turn, had JP Morgan Chase service the  
32          note...Fannie Mae assigned the note back to PHH as the originating lender."

1 PAGE 2, ANSWER 1. (see *Affidavit of John Mitchell*, 1/22/13, Exhibit D). There  
2 are no recorded assignments either to or from Fannie Mae regarding the  
3 Nickerson's Note. As a matter of record, the only hard evidence presented to the  
4 Court regarding the Nickerson's note and Fannie Mae is a letter the Nickersons  
5 received from Fannie Mae regarding Fannie Mae's involvement in the  
6 Nickerson's loan (see Exhibit 6 – a true and correct copy of the letter from Fannie  
7 Mae) which was ruled to be hearsay by this Court. Nevertheless, Fannie Mae, in  
8 this letter, claimed to have ownership of the Nickerson's loan from December  
9 2002 until December 3, 2009, and this letter clearly falls under the hearsay  
10 exception I.R.E. 803(24) "Other exceptions. A statement not specifically covered  
11 by any of the foregoing exceptions but having equivalent circumstantial  
12 guarantees of trustworthiness, if the court determines that (A) the statement is  
13 offered as evidence of a material fact; (B) the statement is more probative on  
14 the point for which it is offered than any other evidence which the proponent can  
15 procure through reasonable efforts; and (C) the general purposes of these rules  
16 and the interests of justice will best be served by admission of the statement into  
17 evidence." It is also important to note that Chase sent a Notice of New Creditor  
18 letter to the Nickersons in December of 2009 (see Exhibit 7 – a true and correct  
19 copy of the Notice of New Creditor letter) stating they purchased the Nickerson's  
20 loan on December 3, 2009. The Court decided this letter was irrelevant. However,  
21 this is a critical piece of evidence relevant to determining PHH's standing because  
22 it shows when Chase actually acquired interest in the Nickerson's Note. I.R.E.  
23 401 "Relevant Evidence" means evidence having any tendency to make  
24 the existence of any fact that is of consequence to the determination of the action  
25 more probable or less probable than it would be without the evidence. This Notice  
26 of New Creditor letter also contradicts all assertions and evidence presented by  
27 this Court, PHH and Chase regarding Chase's ownership of the Nickerson's Note.  
28 Further, the date of sale on this Notice coincides with the date Fannie Mae stated  
29 Fannie Mae's interest was terminated in the Nickerson's loan (see Exhibit 6 – a  
30 true and correct copy of the letter from Fannie Mae).

- 31 h. This Court's claim as an undisputed fact, "PHH owned the loan when this lawsuit  
32 was filed," as evidenced in points a-d above, all of which were a part of the record

1 prior to the summary judgment hearing, is clearly and undisputedly a mistake.  
2 The record before the Court specifically contradicted (disputed) the Court's  
3 finding of this "undisputed fact" and is clearly a genuine issue of material fact.

- 4 i. In the Undisputed Facts RE: Plaintiff's Complaint section of the Court's  
5 Memorandum Opinion RE: PHH's Motion for Summary Judgment, this Court  
6 stated, "The note was initially serviced by J P Morgan Chase Bank (Chase), and  
7 later reconveyed to PHH." However, the Court contradicted this undisputed fact  
8 in its more recent Memorandum Opinion RE: Plaintiff's Second Motion for  
9 Summary Judgment and Nickerson's Motion Summary Judgment when it stated,  
10 "The note was initially serviced by Mortgage Service Center. J P Morgan Chase  
11 Bank (Chase) owned the note and serviced the loan from the end of 2007 until the  
12 beginning of 2010." The very fact this Court disputes its own undisputed facts  
13 raises genuine issues of material fact that precludes summary judgment.
- 14 j. Regarding PHH's first claim for summary judgment for its complaint this Court  
15 was correct in finding, "There is a genuine issue of fact as to whether or not the  
16 Nickersons were in default on their loan as of January and February, 2010 when  
17 they were notified that their account was in default and foreclosure would be  
18 pursued... Therefore, summary judgment on the Plaintiff's complaint should be  
19 denied." PHH, in their second motion for summary judgment, provided no new  
20 evidence to substantiate changing this Court's prior decision regarding summary  
21 judgment. PHH did not account for the "large payment into the escrow account in  
22 July, 2009," and only reinterpreted Chase's previously provided account history  
23 leaving out the principal balance provided by Chase. In fact, PHH only presented  
24 an affidavit that restated the evidence that was previously provided, could not  
25 have been based on personal knowledge and was invalidly notarized according to  
26 James Zombeck, Notary Unit Supervisor for the State of New Jersey Department  
27 of Treasury (See Exhibit 4). Since the Court ruled against PHH's first motion for  
28 summary judgment on their complaint because there were genuine issues of  
29 material fact regarding default and since no new evidence was provided by PHH,  
30 the Court should have found the same and ruled against PHH the second time  
31 around.  
32



- 1 k. I submitted evidence to the Court prior to Final Judgment being rendered that  
2 established genuine issues of material fact that precluded summary judgment  
3 being legally rendered.
- 4 l. Clearwater County District Court Judge Michael Griffin entered a Final Judgment  
5 in response to PHH's request for Summary Judgment even though 1) PHH had  
6 failed to provide any new or admissible evidence to validate their claims of  
7 default or right to foreclose on all counts; 2) the Nickersons notified the Court of  
8 their intention to expand the factual record, specifically to amend the Answer and  
9 Counterclaim, prior to a judgment being rendered; 3) the Nickersons requested a  
10 continuance on the Summary Judgment hearing in order to present evidence they  
11 had just uncovered, but the Court refused to continue the hearing, did not answer  
12 the Nickersons Motion for Continuance until it was too late for the Nickersons to  
13 file their evidence prior to the hearing, then held a telephonic hearing in which the  
14 Court granted the Nickersons the right to submit their additional evidence but  
15 later refused to consider what was submitted.
- 16 m. The Final Judgment rendered created extreme prejudice to the Nickersons and  
17 their ability and opportunity to gain equal access to justice in this case.
- 18 n. The fact Judge Griffin intentionally and willfully rendered a Final Judgment in  
19 lieu of a Summary Judgment later became the sole justification he relied upon in  
20 refusing to consider all of the Nickersons attempts at reconsideration of his  
21 prejudicial judgment rendered and their right to receive equal access to justice at  
22 the District Court level in Clearwater County, Idaho.
- 23 o. The Court ignored the fact the Nickersons proved the default amount claimed by  
24 PHH was incorrect on multiple occasions. One inaccuracy constituted a genuine  
25 issue of material fact and established fatal questions regarding the validity and  
26 authenticity of the records and documents presented. The Nickersons provided  
27 evidence the default being validated based on personal knowledge by Ron  
28 Casperite did not and could not exist. The Nickersons provided witness testimony  
29 that they were not in default and that they could provide further proof if their  
30 attempts to secure discovery were not thwarted with lies, fraud, unlawful  
31 practices, and legal chicanery.  
32

- p. In the Court's Memorandum Opinion RE: Chase's Motion for Summary Judgment, this Court stated, "There was no contract between Chase and the Nickersons that has been presented to the court." However, the Court contradicts this statement, after no new evidence regarding any contractual relationship between Chase and the Nickersons had been provided by Chase or PHH, in its recent Memorandum Opinion RE: Plaintiff's Second Motion for Summary Judgment and Nickerson's Motion Summary Judgment when it stated, "J P Morgan Chase Bank (Chase) owned the note and serviced the loan from the end of 2007 until the beginning of 2010." This Court is claiming Chase owned the note and therefore, had a contract with the Nickersons. Yet again, another contradiction this Court has presented in its opinions and one which precludes the summary judgment this Court granted in favor of Chase because there are genuine issues of material fact surrounding Chase's contractual relationship and duties to the Nickersons in the record before the Court.
13. Throughout this case PHH has not produced the original note and has not proven the note was in their possession.
14. This Court denied the Nickersons the opportunity to be heard regarding their factual allegations of fraud simply because fraud was not pled. However, although fraud was not pled by name, all elements of fraud were present and the Nickersons thought their attorney had presented fraud to this Court and had notified the FBI, the Idaho Attorney General and other law enforcement and government agencies. In addition, since the Nickersons demonstrated fraud was an issue by affidavit and in their motion for summary judgment, the Court should have instructed the Nickersons to amend their pleadings to include fraud so that issue could be fully adjudicated prior to issuing judgment.
15. Exhibit 1 attached to this affidavit is a true and correct copy of a RESPA QWR response provided to the Nickersons by Chase. This new evidence states Chase owns and holds the Nickersons Note. In addition, Chase claims the assignment of record is the assignment from Coldwell to Chase and Chase does not mention or produce the assignment from Chase to PHH. Since the mailing address on the account is different than the address the Nickersons requested the response be sent to, the Nickersons did not receive this evidence in time to present it prior to the summary judgment hearing.

- 1 16. Exhibit 2 attached to this affidavit is a true and correct copy of a RESPA QWR response  
2 provided to the Nickersons by PHH. In this response, PHH does not claim to own or hold  
3 the Nickerson's note and PHH provides what they claim to be the assignment of record  
4 which is the assignment from Coldwell to Chase and not the assignment from Chase to  
5 PHH of which there is no mention or production.
- 6 17. Exhibit 3 attached to this affidavit is a true and correct copy of the note PHH attached to  
7 their QWR response which PHH purports to be the original note. However, this copy of  
8 the note is different than the copy PHH provided with their Complaint (See Complaint  
9 Exhibit C).
- 10 18. Exhibit 4 attached to this affidavit is a true and correct copy of a letter from James  
11 Zombeck, Notary Unit Supervisor for the State of New Jersey Department of Treasury. In  
12 this letter Mr. Zombeck states the notarization of the Second Affidavit of Ronald E.  
13 Casperite is invalid. This new evidence was obtained after the Court chose to ignore and  
14 disregard the evidence, laws and case law the Nickersons presented proving the  
15 notarization was invalid.
- 16 19. Exhibit 5 attached to this affidavit is a true and correct copy of a letter from M & M  
17 Court Reporting, the entity responsible for the Nickersons depositions, which  
18 demonstrates the rules regarding the handling of depositions were violated. This new  
19 evidence was obtained after the Court chose to ignore and disregard the Nickerson's  
20 motion to suppress and the violating of the rules regarding depositions the Nickersons put  
21 forth in their Reply Brief in support of summary judgment and oral argument presented at  
22 the Summary Judgment hearing.
- 23 20. Exhibit 6 attached to this affidavit is a true and correct copy of a letter received from  
24 Fannie Mae in response to a formal inquiry regarding their involvement with the  
25 Nickerson's loan that corroborates witness testimony in this case and states, among other  
26 facts, "the loan was sold to Fannie Mae on 12/27/2002, and Fannie Mae's interest in the  
27 loan terminated as of 12/3/2009."
- 28 21. Exhibit 7 attached to this affidavit is a true and correct copy of a Notice of New Creditor  
29 letter identifying Chase as the New Creditor and stating "the date of the sale of your  
30 mortgage loan to the New Creditor was: December 3, 2009."  
31  
32

- 1 22. Exhibit 8 attached to this affidavit is a true and correct copy of a sworn affidavit from  
2 John Mitchell regarding the Nickerson's case, issues surrounding it, his involvement with  
3 it, and his handling of it.
- 4 23. Exhibit 9 is a true and correct copy of a fax from John Mitchell received by the  
5 Nickersons on February 28, 2013, which states, "An appeal has been filed and amended  
6 counterclaims will be pursued. It appears that the level of fraud and cover up is not  
7 limited to Chase and PHH!!!! Other entities engaged facilitated and profited in this  
8 fraudulent activity. A federal case is in the process of being filed. Federal regulatory  
9 complaints have been filed and a federal investigation is underway."
- 10 24. The depositions in no way represent, reflect, characterize or accurately depict the  
11 answers, spirit, intent or presentation of the facts provided by me or by my wife nor were  
12 the depositions obtained, prepared or presented, legally, honorably, accurately or  
13 ethically.
- 14 25. I have challenged and provided evidence that refutes Just Law's claims to represent PHH  
15 in this case, that challenges the authenticity and legality of evidence provided by them,  
16 and that establishes grounds for sanctions, criminal charges and civil liability judgments  
17 against them, their representatives and their accomplices. Kipp Manwaring has  
18 considerable personal responsibility for his abuse of my family, alleged fraud committed  
19 on the Court and against my family, and the current condition of this case.
- 20 26. I was never notified by PHH regarding the changes in their counsel from Jason Rammell  
21 to Kipp Manwaring when Jason Rammell, who has personal considerable responsibility  
22 for the current condition of this case, left the firm of Just Law. Jason Rammell  
23 acknowledged the validity of the Nickersons claims and had personal knowledge of the  
24 comprehensive damages they were suffering, but made a personal choice to pursue an  
25 unlawful foreclosure anyway, thus assuming personal liability for his alleged client, his  
26 firm and his own actions.
- 27 27. I was not notified Kipp Manwaring left the firm of Just Law and was no longer the  
28 representing attorney.
- 29 28. I was not provided with any notice as required by I.R.C.P. 11(b)(1) that Kipp Manwaring  
30 had left the firm nor provided the information of who would be assuming the  
31 representation for Just Law in this case.  
32

In accordance with I.R.C.P. 7(d) and I.C. § 9-1406, I certify (or declare) under penalty of perjury pursuant to the laws of the State of Idaho that the foregoing is true and correct.

DATED this 3<sup>rd</sup> day of October, 2014

  
CHARLES NICKERSON

### CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 3<sup>rd</sup> day of October, 2014, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

NOTE: Apparently Kipp Manwaring is no longer working for Just Law. However, we have not received notice from Kipp Manwaring, Just Law or the Court regarding his withdrawal nor has anyone provided information on who is now representing Just Law in this case. Therefore, we are just serving Just Law Office.

Just Law Office  
381 Shoup Ave.  
PO Box 50271  
Idaho Falls, ID 83405  
Fax (208)523-9146

☐ U.S. Mail  
☐ Hand Delivered  
☐ Overnight or Priority Mail  
☐ Facsimile

Honorable Michael J. Griffin  
Idaho County District Court  
381 West Main  
Grangeville, ID 83530  
Fax (208)983-2376

☐ U.S. Mail  
☐ Hand Delivered  
☐ Overnight or Priority Mail  
☐ Facsimile

Jon A. Stenquist  
Moffatt Thomas Barrett Rock & Fields  
PO Box 51505  
Idaho Falls, ID 83405  
Fax (208)522-5111

☐ U.S. Mail  
☐ Hand Delivered  
☐ Overnight or Priority Mail  
☐ Facsimile

  
Charles Nickerson

Chase (OH4-7302)  
3415 Vision Drive  
Columbus, OH 43219-6009



January 10, 2014

Donna Nickerson and Charles R. Nickerson  
Po Box 3414  
Redmond, WA 98073

**Verification of debt for mortgage loan \*\*\*\*\*0920**

Borrower(s): Donna Nickerson  
Charles R. Nickerson

Dear Donna Nickerson and Charles R. Nickerson:

This letter is in response to the correspondence we received on December 16, 2013 about the account above.

Enclosed are copies of the following documents:

- Loan Transaction History
- Note
- Security Instrument
- Assignment of Mortgage

It is our position that Chase has addressed your correspondence in a manner that complies with the Real Estate Settlement Procedures Act and Regulation X. We are not required to produce the original note which will remain in our possession in accordance with applicable record retention requirements.

Please note, that the account was transferred to a new servicer on September 20, 2012.

Information regarding the Mortgage Electronic Registration Systems (MERS) can be located on the MERS website at <http://www.mersinc.org/>. However, this is not a MERS loan.

Any information or document requested but not included with our prior response is unavailable or considered confidential, and cannot be provided. A response to all questions related to loan transactions can be found in the loan transaction history.

The investor for this loan is JPMorgan Chase Bank, National Association.

If you have questions, please call us at the telephone number listed below.

Sincerely,

Chase  
(800) 848-9136  
(800) 582-0542 TDD / Text Telephone  
[www.chase.com](http://www.chase.com)

*Exhibit 1*

**PHH Mortgage****PHH**2001 Bishops Gate Blvd  
Mt. Laurel, NJ 08054Tel 800-449-8767  
Fax 856-917-8300

December 24, 2013

Donna Nickerson  
Charles Nickerson  
P.O. Box 3414  
Redmond, WA  
98703RE: Loan Number: 0018154567  
Property Address: 139 Neff Road  
Orofino, ID 83544

Dear Mr. and Mrs. Nickerson:

This letter is in response to the letter received by Mortgage Service Center (the "Letter"). Upon further review of the Letter, it has been established that it is not a Qualified Written Request under RESPA statute. Notwithstanding the Letter not meeting the requirements, Mortgage Service Center has provided the following response.

Mortgage Service Center objects to those portions of the Letter to the extent such requests contained therein contravene or expand the scope of applicable law. Mortgage Service Center further objects to any requests contained in the Letter to the extent they request or seek information or documents protected by the attorney-client privilege and/or attorney work product doctrine. The fact that Mortgage Service Center responds to any request should not be construed as an admission that it accepts or admits the existence of any facts or inferences set forth or assumed by such request. Mortgage Service Center further objects to any request to the extent it seeks the production of documents from any affiliate of Mortgage Service Center or any other third party. Mortgage Service Center will produce those documents which are responsive to a valid Qualified Written Request, which are within its current custody and control. These general objections are asserted with respect to each request and are incorporated by reference in each response set forth below.

Mortgage Service Center has reviewed your request for documents contained in the Letter, some of which are not appropriate under the statute. In addition, note that the Letter does not state your belief that the account is in error. The Letter instead seeks responses to questions that ask for inappropriate information and/or far exceed the scope of an actual Qualified Written Request.

Despite the fact that the Letter does not call in question the charges on the loan, Mortgage Service Center has reviewed the loan account for this purpose. Having completed the research associated with your inquiry, Mortgage Service Center has confirmed that the balance owed on the account is accurate as reflected in the account statement, escrow letters, and payment history.

Enclosed are the following documents in furtherance of answering your request:

- Payment History/Transaction Codes
- Note
- Assignment of Mortgage
- Executed Hud-1 Statement
- Service Transfer Disclosure Statement
- Escrow Statement
- Notice of Default
- Foreclosure Notice

*Log in to MortgageQuestions.com --- your servicing website connection.*

Exhibit 2  
page 1 58

**PHH Mortgage****PHH**2001 Bishops Gate Blvd  
Mt. Laurel, NJ 08054

Tel 800-449-8767

Fax 856-917-8300

**Loan Accounting and Servicing Systems**

Numerous questions and requests are outside the scope of what is permitted in a Qualified Written Request. Mortgage Service Center has provided a detail Customer Account Activity statement along with a quick reference transaction codes to assist you in your review of the account.

**Debits and Credits**

Mortgage Service Center has provided a detail Customer Account Activity statement along with a quick reference transaction codes to assist you in your review of the account.

**Mortgage and Assignments**

Numerous questions and requests are outside the scope of a Qualified Written Request. Documentation enclosed show Mortgage Service Center is the entity servicing the loan.

**Attorney Fees**

Numerous questions and requests are outside the scope of a Qualified Written Request. As of the date of this letter, any fees and costs billed are accounted for in the history provided. This will not include those fees/costs not yet billed.

**Suspense/Unapplied Accounts**

No such funds in said accounts.

**Late Fees**

Numerous questions and requests are outside the scope of a Qualified Written Request. Late fees are detailed within the history provided.

**Property Inspections**

Numerous questions and requests are outside the scope of a Qualified Written Request. Property Inspection fees are detailed within the history provided.

**BPO Fees**

Numerous questions and requests are outside the scope of a Qualified Written Request.

**Forced-Placed Insurance**

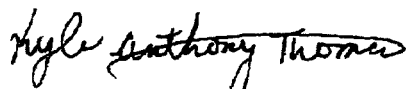
N/A

**Servicing Related Questions**

Numerous questions and requests are outside the scope of a Qualified Written Request. Documentation has been provided to answer in reference to assignments and note. The physical address for Mortgage Service Center is 2001 Bishop's Gate Boulevard, Mount Laurel NJ 08054.

Further assistance concerning this loan may be directed to the customer service department at 866-947-7729

Sincerely,



Kyle Anthony Thomas  
Mortgage Service Center

***Log in to MortgageQuestions.com --- your servicing website connection.***

*Exhibit 2  
page 2 59*



MDN #:

Loan Number: 0018154567

## NOTE

October 4th, 2002  
[Date]OROFINO  
[City]Idaho  
[State]

3165 NEFF ROAD, OROFINO, ID 83544

[Property Address]

## 1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 285,000.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is Coldwell Banker Mortgage

I will make all payments under this Note in the form of cash, check or money order.

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

## 2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 6.280 %.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(B) of this Note.

## 3. PAYMENTS

## (A) Time and Place of Payments

I will pay principal and interest by making a payment every month.

I will make my monthly payment on the 01st day of each month beginning on December 1st, 2002. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on November 1st, 2032, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at 3000 Leadenhall Road Mount Laurel, NJ 08054  
or at a different place if required by the Note Holder.

## (B) Amount of Monthly Payments

My monthly payment will be in the amount of U.S. \$ 1760.36

## 4. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under the Note.

I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

MULTISTATE FIXED RATE NOTE-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

LMP -SN (0085).02

Form 3208 1/01

VMP MORTGAGE FORMS - (500)521-7281

Page 5 of 5

LSBels: *MTT CRW*Exhibit 3  
Page 1

**5. LOAN CHARGES**

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

**6. BORROWER'S FAILURE TO PAY AS REQUIRED****(A) Late Charge for Overdue Payments**

If the Note Holder has not received the full amount of any monthly payment by the end of Fifteen calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.00% of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

**(B) Default**

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

**(C) Notice of Default**

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal which has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

**(D) No Waiver By Note Holder**

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

**(E) Payment of Note Holder's Costs and Expenses**

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

**7. GIVING OF NOTICES**

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by delivering it or by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

**8. OBLIGATIONS OF PERSONS UNDER THIS NOTE**

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

**9. WAIVERS**

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

**10. UNIFORM SECURED NOTE**

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses which might result if I do not keep the promises which I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions are described as follows:

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

Donna Nickerson  
Donna Nickerson

(Seal)  
-Borrower

Charles R. Nickerson  
Charles R. Nickerson

(Seal)  
-Borrower

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(Seal)  
-Borrower

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(Seal)  
-Borrower

[Sign Original Only]



**State of New Jersey**

DEPARTMENT OF THE TREASURY  
DIVISION OF REVENUE  
& ENTERPRISE SERVICES  
P.O. BOX 452  
TRENTON, NJ 08646

**CHRIS CHRISTIE**  
*Governor*

**KIM GUADAGNO**  
*Lt. Governor*

**ANDREW P. SIDAMON-ERISTOFF**  
*State Treasurer*

June 9, 2014

Nickerson Family  
3165  
Neff Road  
Orofino, ID 83544

Upon review of the SECOND AFFIDAVIT OF RONALD E. CASPERITE that you provided, it is apparent that the notarization is invalid. It lacks the signature of the Notary Public.

NJSAS 52:7-19 states: Each notary public, in addition to subscribing his autograph signature to any jurat upon the administration of any oath or the taking of any acknowledgement or proof, shall affix thereto his name in such a manner and by such means, including, but not limited to, printing, typing, or impressing by seal or mechanical stamp, as will enable the Secretary of State easily to read said name.

James F. Zombeck

A handwritten signature in cursive script, appearing to read "James F. Zombeck".

Notary Unit Supervisor

05/23/2014 14:24

2087658097

M&amp;M COURT REPORTING

PAGE 01



816 E. Sherman Ave., Suite 7  
Coeur d'Alene, ID 83814  
208-765-1700  
208-765-8097 (fax)  
email csmith@mamcourt.com

**NORTHERN OFFICES**  
1 800 879-1700  
Spokane, Washington

**SOUTHERN OFFICES**  
1 800 234-9641

421 W. Franklin Street  
P.O. Box 2036  
Boise, Idaho 83701-2636  
208 345-9611  
208 345-8800 (fax)  
email m-and-m@qwest.net

Twin Falls, Idaho  
208 734-1700  
Pocatello, Idaho  
208 232-5581  
Ontario, Oregon  
541 881-1700

June 23, 2014

Kipp L. Manwaring  
Manwaring Law Office, PA  
381 Shoup Avenue, Suite 210  
Idaho Falls, ID 83402

**RE: PHH Mortgage v. Nickerson, et al**  
Case No. CV 2011-28 (Clearwater County, Idaho)  
**Deponents: Charles Nickerson and Donna Nickerson**  
Taken on 10/4/2012  
M & M Job No. 6497C2/6498C2

Dear Mr. Manwaring:

Charles and Donna Nickerson have recently contacted my office and advised me that they were never given the opportunity to review and make any changes to their above deposition transcripts by their counsel of record at the time, Mr. John C. Mitchell.

I am enclosing a copy of the letter that I sent to Mr. Mitchell attempting to arrange for the deponents' review and signatures.

Sincerely yours,

M & M COURT REPORTING SERVICE, INC.

Cheryl Barrett Smith

cc: Mr. Jon A. Stenquist  
Mr. & Mrs. Charles and Donna Nickerson via fax ✓  
Clerk of the District Court, Clearwater County

Enc.

2 PGS  
Sent 6/23/14  
425-691-7926

Exhibit 5  
Page 1

06/23/2014 14:24

2087658097

M&amp;M COURT REPORTING

PAGE 02



816 E. Sherman Ave., Suite 7  
Coeur d'Alene, ID 83814  
208-765-1700  
208-765-8097 (fax)  
email [usmith@mnmcourt.com](mailto:usmith@mnmcourt.com)

**NORTHERN OFFICES**  
1 800 879-1700  
Spokane, Washington

**SOUTHERN OFFICES**  
1 800 234-9611

421 W. Franklin Street  
P.O. Box 2636  
Boise, Idaho 83701-2636  
208 345-9611  
208 345-8800 (fax)  
email [m-and-m@qwest.net](mailto:m-and-m@qwest.net)

Twin Falls, Idaho  
208 734-1700  
Pocatello, Idaho  
208 232-5581  
Ontario, Oregon  
541 881-1700

October 8, 2012

John C. Mitchell  
Clark & Feeney  
1229 Main Street, Suite 106  
P.O. Drawer 285  
Lewiston ID 83501-0285

**RE: PHH Mortgage v. Nickerson, et al**  
Case No. CV 2011-28 (Clearwater County, Idaho)  
**Deponents: Charles Nickerson and Donna Nickerson**  
Taken on 10/4/2012  
M & M Job No. 6497C2/6498C2

Enclosed are copies of the above-referenced transcripts, plus the Certificates of Witness and Change Sheets.

Please instruct the deponents to review the depositions, record any changes on the Change Sheets and sign the Certificates before a notary public  
**RETURNING SAID ORIGINAL PAGES TO M & M COURT REPORTING SERVICE, INC., 816 E. Sherman Avenue, Suite 7, Coeur d'Alene, Idaho, 83814.**

Upon completion of the deposition, the Idaho Rules of Civil Procedure allow the witness 30 days from receipt of the transcript to exercise the right to read and sign. Failure to comply by such time will be deemed a waiver of right to read and sign.

The sealed original transcripts are being delivered to the custody of the taking attorney, Mr. Kipp L. Manwaring, Boise, Idaho.

Sincerely yours,

M & M COURT REPORTING SERVICE, INC.

Cheryl Barrett Smith

cc: Mr. Kipp L. Manwaring, w/sealed original transcripts  
Mr. Jon A. Stenquist  
Clerk of the District Court, Clearwater County

Enc.

Exhibit 5  
page 2



**FannieMae**

3900 Wisconsin Avenue, NW  
Washington, DC 20016-2892

May 2, 2013

Ms. Donna Nickerson  
3165 NEFF RD  
OROFINO, ID 83544

Ref. 3165 NEFF RD., OROFINO, ID 83544

Fax # 425-691-7926 and First Class Mail

Dear Ms. Nickerson,

Thank you for contacting Fannie Mae. You requested a written response to your letter dated 4/18/13.

Please be advised that Fannie Mae does not own your loan. Our records show that the loan was sold to Fannie Mae on 12/27/2002, and Fannie Mae's interest in the loan terminated as of 12/3/2009. Your request for copies of your loan file, communications and correspondence should be directed to your mortgage servicer, JP Morgan Chase.

If you have further questions, please contact our Resource Center at 1-800-732-6643.

*Margie*  
Business Analyst  
Fannie Mae's Resource Center  
Washington D.C

Confidential - Internal Distribution

Exhibit 6



Chase Home Finance LLC  
OH4-7382  
3415 Vision Drive  
Columbus, OH 43219-6009

December 22, 2009

DONNA NICKERSON  
CHARLES R NICKERSON  
PO BOX 3414  
REDMOND WA 98073

Account Ending In: [REDACTED]  
Date of Loan: October 4, 2002  
Original Amount of Loan: \$285,000.00  
Mortgage Property Address:  
3165 NEFF RD  
OROFINO, ID 83544

**SUBJECT: NOTICE OF NEW CREDITOR**

We are sending you this **Notice** in accordance with the requirements of the "Helping Families Save Their Homes Act of 2009." Your mortgage loan (referenced above) has been sold or transferred to JPMorgan Chase Bank, N.A. ("Chase"). Chase is the New Creditor of your loan.

- This **Notice** is provided for informational purposes only.
- You are not required to take any action as a result of this **Notice**.
- This **Notice** does not affect the servicing of your mortgage loan or change your servicer. Please continue to make payments on your mortgage loan to your current servicer at the same address to which you were instructed by your servicer to make payments (unless or until you are advised differently by your servicer). Any mortgage payments that are not sent timely to your servicer may result in late fees and other charges

*The term "we" means Chase. The terms "you" and "your" mean the mortgage borrower(s) identified above.*

LC-CHEN-0809B

Exhibit 7  
page 1 67



**NOTICE OF NEW CREDITOR**

*Please note the following information regarding the transfer of your mortgage loan:*

1. The identity (name), address and telephone number of the New Creditor is:

JPMorgan Chase Bank, N.A.  
111 Polaris Parkway  
Columbus, OH 43240-2050  
1-800-848-9136

2. The date of the sale of your mortgage loan to the New Creditor was: December 3, 2009.

3. Chase Home Finance, LLC is acting as the agent for the creditor. If you have any questions regarding this Notice, please contact Chase Home Finance, LLC at the address and phone number below:

Chase Home Finance, LLC  
3415 Vision Drive  
Columbus, OH 43219  
1-800-848-9136

4. Evidence of transfer of ownership of your mortgage loan or the instrument securing your mortgage loan is recorded in the land records of the county in which the mortgaged property is located.
5. Any investor or creditor that purchases your loan is required under federal law to give you written notice. **If you have any questions concerning this Notice, please feel free to contact us toll-free at:**

**1-800-848-9136**

September 28, 2014

Re: Charles and Donna Nickerson

To Whom it May Concern:

My name is John Mitchell. I was the attorney of record for Charles and Donna Nickerson in a foreclosure suit involving PHH and Chase.

I originally met the Nickersons when Just Law was trying to do a non judicial foreclosure on the property. After pointing out in either a phone call or a letter or both to Just Law that a non judicial foreclosure was not a proper remedy in this matter the non judicial foreclosure was cancelled and I informed them to contact me if they were going to pursue a judicial foreclosure. The next contact with regards to the case came from the Nickersons who had found out that the Plaintiff had filed a complaint and instead of serving them personally or contacting me as requested had asked for and received permission to effectuate service via publication.

During my representation of the Nickersons I was personally experiencing some major mental issues including severe depression anxiety and compulsive gambling. As a footnote I am a recovering alcoholic with almost 16 years of sobriety however I was naive or refused to recognize that my addiction relapsed into a different destructive behavior.

During my representation of the Nickersons my depression and compulsive gambling had me contemplating suicide numerous times daily and without question I was mentally, emotionally and physically unfit. I have since received inpatient treatment for gambling and while my depression is better to a great extent I still experience periods of depression. In October of 2013 I resigned from the bar in lieu of suspension and I have spent the time just trying to survive. I recently have gotten a seasonal job through a temporary employment agency inspecting onions of behalf of the State.

I struggle every day to come to grips with the disaster that is my life and want to emphasize that I realize that I am responsible for my actions and choices. In hindsight I clearly could not handle the stress of practicing law and I lost it mentally. Unfortunately I did not recognize that fact soon enough and during my representation of the Nickersons I did not know what to do and not knowing what to do led me to being dishonest with myself and others, notably the Nickersons.

I did not keep the Nickersons informed about the status of their case after their depositions were taken, did not tell them about a summary judgment motion, the summary judgment decision, told them an appeal had been filed when it had not and withdrew from the case without telling them. I cannot remember exactly what I did or did not do or say or did not say but I am sure the Nickersons are in a better position to inform the Court. While my opinion is probably meaningless I do think

that the Nickersons are probably the most honest and caring people that I have ever met.

The Nickersons deserve to have the underlying complaint and their counterclaims decided on the merits of the case and not have their life affected because they put their faith in an attorney who did not have the mental and emotional capabilities to give them adequate representation.

The Nickersons have uncovered countless irregularities and falsities in their case which if presented properly to a Court should be a defense to the foreclosure claim and support for their counterclaims.

During my representation of the Nickersons I talked with several governmental agencies about wrongful foreclosures in general and the Nickersons' case in specific. I talked with the FBI agents in Lewiston and the Attorney General's office in Boise. I gave the FBI a fairly thick binder identifying specific incidents of misconduct on the part of the plaintiffs with supporting documentation that this type of conduct had been done extensively before. Off the top of my head I cannot remember the specifics but I seem to recall notary fraud. To the best of my recollection I remember interest and thinking that one of these agencies would take the case on and investigate but ultimately these agencies declined. I also filed online complaints with one or two federal agencies but do not remember if they took any action.

The Nickersons' case was not decided on its merits and really no meaningful discovery was ever answered by the Plaintiffs. There is no prejudice to the Plaintiffs in allowing the Nickersons to have discovery done properly and have the underlying case and their counterclaims decided on the facts of the case and not have the case decided because of an incompetent mentally unfit at the time attorney who did not know how to handle the mess that he created. I believe all the Nickersons want is the chance to put on their defense and their proof for their counterclaims.

In accordance with I.R.C.P. 7(d) and I.C. 9-1406 I certify or declare under penalty of perjury pursuant to the laws of the State of Idaho that the foregoing is true and correct. Dated the 28<sup>th</sup> day of September, 2014.

Sincerely,

  
John Mitchell

FEB. 28. 2013 8:34AM

CLARK &amp; FEENEY ATT

NO. 8586 P. 2

The trial scheduled to begin February 25<sup>th</sup>, 2013 has been vacated! Prior to trial the Court was asked to reinstate our counterclaims and to dismiss the foreclosure action based on improper pleadings, improper service, and deficient/fraudulent documents. While the Court holds that PHH and its foreclosure action deserves its day in court despite unfavorable law and facts the Court holds that it will not reinstate the Nickersons counterclaims despite law to the contrary and grotesque amounts of damages being suffered by the Nickersons. An appeal has been filed and amended counterclaims will be pursued. It appears that the level of fraud and cover up is not limited to Chase and PHH!!!! Other entities engaged facilitated and profited in this fraudulent activity. A federal case is in the process of being filed. Federal regulatory complaints have been filed and a federal investigation is underway. We will post more on these entities and their activities soon so stay posted.

Exh. 6.49

Case # CV2011-28  
Filed 10/22/14  
at 4:50 o'clock P Mp.1  
By BP Clerk  
Deputy

1 CHARLES NICKERSON AND DONNA NICKERSON  
2 3165 Neff Rd  
3 Orofino, ID 83544  
4 Defendants Pro Se

5  
6 **IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE**  
7 **OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER**  
8

9 PHH MORTGAGE,  
10 Plaintiff/Counter-Defendant,  
11 vs.

Case No.: CV 2011-28

**EDITED MOTION TO SET ASIDE  
JUDGMENT**

12  
13 CHARLES NICKERSON and DONNA  
14 NICKERSON, husband and wife;  
15 KNOWLTON & MILES PLLC; WELLS  
16 FARGO BANK, N.A., AND JOHN DOES I  
17 thru X

18 Defendant,

19 COLDWELL BANKER MORTGAGE, a/d/b/a  
20 of PHH MORTGAGE, and JPMORGAN  
21 CHASE BANK, N.A.

22 Third Party-Defendants.

23 COMES NOW, Defendants, Charles and Donna Nickerson, in response to the Amended  
24 Judgment filed on June 24, 2014, in accordance with I.R.C.P. 60(b)(iii) and in conjunction with  
25 their motion for relief from judgment request this Court to set aside judgment. This request is  
26 supported by the below, the Affidavit of John L. O'Brien and the Affidavit of Charles Nickerson  
27 in Support of Motion to Set Aside Judgment submitted in conjunction with this Motion.

**I.R.C.P. 60(b)**

*This rule does not limit the power of a court to:*

*(iii) to set aside a judgment for fraud upon the court.*

30 Black's Law Dictionary defines fraud on the court as follows: "In a judicial proceeding, a  
31 lawyer's or party's misconduct so serious that it undermines or is intended to undermine the  
32 integrity of the proceeding."

1 Chase, PHH, and their counsels of record committed fraud on the Court by claiming  
2 Chase assigned the Nickersons' note and mortgage to PHH and as proof of that assignment they  
3 presented instrument #214459 recorded in the records of Clearwater County, Idaho (see *Affidavit*  
4 *of Charles Nickerson in Support of Motion to Set Aside Judgment*, Exhibit 1). Chase, PHH and  
5 their attorneys of record knew and know that instrument #214459 was robo-signed by Kirsten  
6 Bailey, and thus, has no legal standing. However, in order to purposefully defraud the  
7 Nickersons, this Court and the world at large, they have continued to intentionally pursue this  
8 fraudulent and wrongful foreclosure using instrument #214459.

9 John L. O'Brien, Register of Deeds for the Commonwealth of Massachusetts Southern  
10 Essex District Registry of Deeds, has provided an affidavit "attesting to the presence of a robo-  
11 signed signature on your document as listed on McDonnell Property Analytics Approved Robo-  
12 signers List." He goes on to state, "If you are currently being foreclosed upon, this affidavit may  
13 be presented to your attorney, the lender, or the court to show that your chain of title has been  
14 corrupted." (See *Affidavit of Charles Nickerson in Support of Motion to Set Aside Judgment*,  
15 Exhibit 2). In his affidavit, Mr. O'Brien provides the following definition of robo-signer: *The*  
16 *person on a legal document processing assembly line whose only task is to sign previously*  
17 *prepared documents affecting title to real property in a robotic-like fashion without reading the*  
18 *documents or verifying the facts contained therein by reviewing primary source evidence. The*  
19 *robo-signer's mission is to expedite the documents' recordation in the public land records or in*  
20 *court proceedings. Additionally, robo-signers regularly fail to establish or simply do not have*  
21 *the authority to execute these documents on behalf of the legal title holder or principal on whose*  
22 *behalf they purport to act.*

23 Further, instrument #214459 is fraudulent for multiple other reasons. Among other issues,  
24 1) Chase has claimed throughout this proceeding that they never owned the Nickersons Note and  
25 Mortgage, and therefore, could have never assigned something they did not own. Chase used this  
26 claim to prevent the Nickersons from securing necessary discovery and from access to records  
27 that they are federally mandated to have access to. 2) Chase, in their response to the Nickersons  
28 QWR, stated they are currently in possession of the Nickersons' Note and are the investor on the  
29 Nickersons' loan, and both Chase and PHH claimed, in response to QWRs, that the assignment  
30 of record is the assignment from Coldwell to Chase. Therefore, both Chase and PHH have  
31 admitted this instrument is false and being fraudulently presented to this Court. 3) This  
32 assignment calls Just Law, Inc. the successor trustee prior to when PHH could have appointed a

1 successor trustee. This assignment is what allegedly gave PHH the legal authority to appoint a  
2 successor trustee, and thus, Just Law's appointment as successor trustee could not occur until this  
3 assignment had occurred. In and of itself, this demonstrates fraud and intent to defraud this Court  
4 and the Nickersons, and is grounds for criminal charges, I.C. § 18-3203, and for the revoking of  
5 Just Law's licensure as an escrow agency in the State of Idaho, I.C. § 30-919(8).

6 Additionally, PHH filed instruments #214460 (see *Affidavit of John Mitchell, 1/22/13*,  
7 Exhibit D), Appointment of Trustee, and #214462 (see *Affidavit of John Mitchell, 1/22/13*,  
8 Exhibit D), Notice of Default, which are both fraudulent because the assignment from Chase to  
9 PHH did not occur as claimed in these proceedings and their content is false. PHH did not have  
10 the legal authority to appoint a trustee or file a Notice of Default and the Notice of Default is  
11 incorrect as PHH has confirmed and testified to before this court. Therefore, all three  
12 instruments, #214459, #214460, and #214462, are complete frauds, constitute fraud on the court  
13 and felonious crimes and the responsibility of this Court to hold them accountable must not be  
14 neglected and ignored any longer.

15 In addition, Chase, PHH and their attorneys of record committed fraud on the court by  
16 purposefully misrepresenting and concealing the chain of title transfers and material facts  
17 regarding the Nickersons loan which is in direct violation of I.C. §§ 26-31-211(5) and (8).

18 **I.C. 26-31-211. PROHIBITED PRACTICES OF MORTGAGE BROKERS AND**  
19 **MORTGAGE LENDERS.** No mortgage broker or mortgage lender licensee under this  
20 part or person required under this part to have such license shall:

21 (5) Engage in any misrepresentation or omission of a material fact in connection  
22 with a residential mortgage loan;

23 (8) Misrepresent, circumvent or conceal, through whatever subterfuge or device,  
24 any of the material terms of a residential mortgage loan transaction;

25 Chase, PHH and their attorneys of record have intentionally undermined the integrity of  
26 this proceeding; have committed felony offenses by filing known to them robo-signed,  
27 fraudulent documents in the county records (I.C. § 18-3203 - Offering False or Forged  
28 Instrument for Record); have purposefully violated I.C. §§ 26-31-211(5) and (8); have repeatedly  
29 engaged in misrepresentations and omissions of material facts prior to and throughout these  
30 proceedings in connection with the Nickerson residential loan; have irrefutably misrepresented,  
31 circumvented and concealed through various subterfuge and devices the material terms of the  
32 Nickerson loan transaction; and thus, have committed fraud on this court. Therefore, due to the

1 fraud on the court committed by PHH, Chase and their counsels of record, this Court must set  
2 aside judgment, its prejudice against the Nickersons, and uphold the laws of the State of Idaho.

3 Wherefore, because of the fraud on the court committed by Chase, PHH and their  
4 counsels of record against this Court and the Nickersons, the Nickersons implore the Court to  
5 immediately set aside the judgments on file, grant judgment in favor of the Nickersons, and hold  
6 Chase, PHH and their counsels of record comprehensively liable for the extreme, severe and  
7 substantial abuse and damages suffered by the Nickersons that have occurred in the judicial  
8 presence and with the enablement of this Court.

9 Oral argument requested.

10 In accordance with I.R.C.P. 7(d) and I.C. § 9-1406, I certify (or declare) under penalty of  
11 perjury pursuant to the laws of the State of Idaho that the foregoing is true and correct.

12  
13 DATED this 22<sup>nd</sup> day of October, 2014

14   
15 CHARLES NICKERSON  
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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 22<sup>nd</sup> day of October, 2014, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

NOTE: Apparently Kipp Manwaring is no longer working for Just Law. However, we have not received notice from Kipp Manwaring, Just Law or the Court regarding his withdrawal nor has anyone provided information on who is now representing Just Law in this case. Therefore, we are just serving Just Law Office.

Just Law Office

381 Shoup Ave.

PO Box 50271

Idaho Falls, ID 83405

Fax (208)523-9146

( ) U.S. Mail

( ) Hand Delivered

( ) Overnight or Priority Mail

(\*) Facsimile

Honorable Michael J. Griffin

Idaho County District Court

381 West Main

Grangeville, ID 83530

Fax (208)983-2376

( ) U.S. Mail

( ) Hand Delivered

( ) Overnight or Priority Mail

(\*) Facsimile

Jon A. Stenquist

Moffatt Thomas Barrett Rock & Fields

PO Box 51505

Idaho Falls, ID 83405

Fax (208)522-5111

( ) U.S. Mail

( ) Hand Delivered

( ) Overnight or Priority Mail

(\*) Facsimile

  
Charles Nickerson

CLERK OF DISTRICT COURT  
CLEARWATER COUNTY

2014 OCT 21 PM 5:01

CASE NO. 002011-28

BY BP DEPUTY

1 CHARLES NICKERSON AND DONNA NICKERSON  
2 3165 Neff Rd  
3 Orofino, ID 83544

4 Defendants Pro Se

5  
6 **IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE**  
7 **OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER**  
8

9 PHH MORTGAGE,

Case No.: CV 2011-28

10 Plaintiff/Counter-Defendant,

**AFFIDAVIT OF CHARLES NICKERSON**  
**IN SUPPORT OF MOTION TO SET ASIDE**  
**JUDGMENT BASED ON**  
**SUPPLEMENTAL**  
**EVIDENCE OF FRAUD**  
**ON THE COURT**

11 vs.

12  
13 CHARLES NICKERSON and DONNA  
14 NICKERSON, husband and wife;  
15 KNOWLTON & MILES PLLC; WELLS  
16 FARGO BANK, N.A., AND JOHN DOES I  
17 thru X

18 Defendant,

19 COLDWELL BANKER MORTGAGE, a/d/b/a  
20 of PHH MORTGAGE, and JPMORGAN  
21 CHASE BANK, N.A.

22 Third Party-Defendants.

23 I, CHARLES NICKERSON, deposes and states:

- 24 1. I am a Defendant in the above-entitled action.
- 25 2. I am competent to testify to these matters.
- 26 3. I have read and have personal knowledge of Exhibit 1.
- 27 4. Attached as Exhibit 1 is a true and correct copy of a letter from the State of Idaho Office  
28 of the Secretary of State Notary Public Department.
- 29 5. I wrote Exhibit 2 and have personal knowledge of its contents.
- 30 6. Attached as Exhibit 2 is a true and correct copy of a letter I sent to the Notary Public  
31 Department of the State of Idaho.
- 32

1 In accordance with I.R.C.P. 7(d) and I.C. § 9-1406, I certify (or declare) under penalty of  
2 perjury pursuant to the laws of the State of Idaho that the foregoing is true and correct.

3  
4 DATED this 21<sup>st</sup> day of October, 2014

5   
6 CHARLES NICKERSON  
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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 21<sup>st</sup> day of October, 2014, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

NOTE: Apparently Kipp Manwaring is no longer working for Just Law. However, we have not received notice from Kipp Manwaring, Just Law or the Court regarding his withdrawal nor has anyone provided information on who is now representing Just Law in this case. Therefore, we are just serving Just Law Office.

Just Law Office

381 Shoup Ave.

PO Box 50271

Idaho Falls, ID 83405

Fax (208)523-9146

( ) U.S. Mail

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Idaho County District Court

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( ) Facsimile

Jon A. Stenquist

Moffatt Thomas Barrett Rock & Fields

PO Box 51505

Idaho Falls, ID 83405

Fax (208)522-5111

( ) U.S. Mail

( ) Hand Delivered

( ) Overnight or Priority Mail

( ) Facsimile

  
Charles Nickerson

Oct 21 14 05:43p

10/21/2014 08:45 FAX

Mailing Address:  
PO Box 83720  
Boise ID 83720-0080

Physical Location:  
450 N 4<sup>th</sup> Street  
Boise ID 83702



STATE OF IDAHO  
OFFICE OF THE  
SECRETARY OF STATE

**RECEIVED**  
OCT 21 2014  
BY: Notaries and Trademarks Division

Phone: (208) 332-2810  
Fax: (208) 334-3500

[dfarnsworth@sos.idaho.gov](mailto:dfarnsworth@sos.idaho.gov)  
[www.sos.idaho.gov](http://www.sos.idaho.gov)

October 21, 2014

Charles and Donna Nickerson  
3165 Neff Rd  
Orofino ID 83544

RE: Idaho Notary Public Signature

Dear Sir/Madam:

In response to your letter dated October 20, 2014

Idaho code 51-109 and 55-716 both reference information on a Notary Public's signature. Below are excerpt from those codes.

51-109. FORMS FOR NOTARIAL ACTS. (1) Certificates of acknowledgment shall substantially conform to the forms set forth in sections 55-710 through 55-715, Idaho Code.

(2) An oath or affirmation, which is in writing, shall be signed by the person who takes it, and the notary public shall enter thereunder substantially the following:

"State of Idaho )

)ss.

County of ..... )

Subscribed and sworn (or affirmed) before me this ..... day of ....., .....  
.....(official signature and seal)"

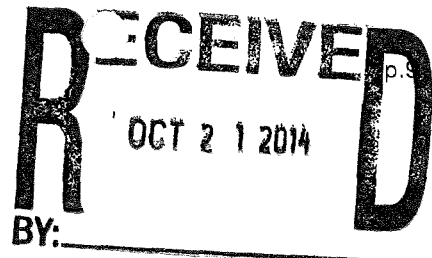
55-716. Authentication of certificate. Officers taking and certifying acknowledgments or proof of instruments for record must authenticate their certificates by affixing thereto their signatures, followed by the names of their offices; also their seals of office, if by the laws of the territory, state or country where the acknowledgment or proof is taken, or by authority of which they are acting, they are required to have official seals.

Sincerely,

Debbie Farnsworth  
Notary Public Dept  
State of Idaho

Exhibit 1

Oct 21 14:05:43p



Charles and Donna Nickerson  
3165 Neff Rd  
Orofino, ID 83544

October 20, 2014

Dear Debbie,

We have received a document which contains a notary's seal, however, it is not signed by the notary. Is this a valid notarization? If not, please provide the Idaho Statute or policy which requires the notary to sign the document they are notarizing.

Please fax your response to 425-691-7926. If you have any questions regarding this request, please give us a call at 425-691-7926.

Thank you for your assistance in this matter.

Sincerely,

  
Charles Nickerson

Exhibit 2

CLERK OF DISTRICT COURT  
CLEARWATER COUNTY

2014 OCT 21 PM 5: 01 ✓

CASE NO. CV2011-28BY 60 DEPUTY

1 CHARLES NICKERSON AND DONNA NICKERSON  
2 3165 Neff Rd  
3 Orofino, ID 83544  
4 Defendants Pro Se

5  
6 **IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE**  
7 **OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER**  
8

9 PHH MORTGAGE,

Case No.: CV 2011-28

10 Plaintiff/Counter-Defendant,

11 **MOTION TO SET ASIDE JUDGMENT**  
12 **BASED ON SUPPLEMENTAL**  
13 **EVIDENCE OF FRAUD**  
14 **ON THE COURT**

15 vs.

16 CHARLES NICKERSON and DONNA  
17 NICKERSON, husband and wife;  
18 KNOWLTON & MILES PLLC; WELLS  
19 FARGO BANK, N.A., AND JOHN DOES I  
20 thru X

21 Defendant,

22 COLDWELL BANKER MORTGAGE, a/d/b/a  
23 of PHH MORTGAGE, and JPMORGAN  
24 CHASE BANK, N.A.

25 Third Party-Defendants.

26 COMES NOW, Defendants, Charles and Donna Nickerson, request the Court  
27 demonstrate its desire to ensure equal access to justice for the Nickersons and take Judicial  
28 Notice of the fact that, by law, Idaho requires notaries to sign their notarizations. As such, the  
29 Second Affidavit of Ronald E. Casperite presented by PHH as proof of default is invalid, void,  
30 inadmissible as evidence, and should not, nor can it be, relied upon for judgment. Based on  
31 I.R.C.P. 60 (b)(iii), the Nickersons request this Court to set aside judgment in favor of PHH  
32 based on fraud on the Court.

33 I.C. § 51-109 FORMS FOR NOTARIAL ACTS and I.C. § 55-716 Authentication of  
34 Certificate require notaries to affix their signatures to certificates of acknowledgement and oaths  
35 or affirmations which are in writing (See *Affidavit of Charles Nickerson in Support of Motion to*  
36 *Set Aside Judgment Based on Supplemental Evidence of Fraud on the Court*, Exhibit 1).

1 Therefore, because the Second Affidavit of Ronald E. Casperite submitted by PHH does not  
2 contain the notarization signature, it is not validly notarized and authenticated, must not be  
3 considered as evidence and constitutes fraud on the court.

4 Further, the Nickersons request the Court review the letter from James Zombeck (*See*  
5 *Motion For Relief From Judgment Or Order*, Exhibit 4) in conjunction with Exhibit 1 (*See*  
6 *Affidavit of Charles Nickerson in Support of Motion To Set Aside Judgment Based on*  
7 *Supplemental Evidence of Fraud on the Court*, Exhibit 1) submitted with this Motion and all  
8 other evidence in the record and before this Court submitted by the Nickersons regarding the  
9 Second Affidavit of Ronald E. Casperite, and determine no matter what state PHH claims to be  
10 governed by in this action, the Second Affidavit of Ronald E. Casperite is not a valid document;  
11 any reliance on it is unlawful, unjust, and in error; and that any rulings based upon it must be  
12 reversed. As a matter of record and law, PHH has fatally failed to prove default in this action,  
13 and thus has no claim for relief.

14 Wherefore, the Nickersons request this Court uphold the laws of the States of Idaho and  
15 New Jersey and enter an order that the Second Affidavit of Ronald E. Casperite is invalidly  
16 notarized, immediately set aside judgment in favor of PHH, comprehensively sanction PHH and  
17 their accomplices for their intentional disregard for the laws of Idaho, their willful and malicious  
18 contempt toward the integrity of these proceedings, and their purposeful fraud on the court and  
19 the Nickersons, and justly grant judgment in favor of the Nickersons.

20 Oral argument requested.

21 In accordance with I.R.C.P. 7(d) and I.C. § 9-1406, I certify (or declare) under penalty of  
22 perjury pursuant to the laws of the State of Idaho that the foregoing is true and correct.

23  
24 DATED this 21<sup>st</sup> day of October, 2014

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26 CHARLES NICKERSON  
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 21<sup>st</sup> day of October, 2014, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

NOTE: Apparently Kipp Manwaring is no longer working for Just Law. However, we have not received notice from Kipp Manwaring, Just Law or the Court regarding his withdrawal nor has anyone provided information on who is now representing Just Law in this case. Therefore, we are just serving Just Law Office.

Just Law Office

381 Shoup Ave.

PO Box 50271

Idaho Falls, ID 83405

Fax (208)523-9146

☐ U.S. Mail

☐ Hand Delivered

☐ Overnight or Priority Mail

☒ Facsimile

Honorable Michael J. Griffin

Idaho County District Court

381 West Main

Grangeville, ID 83530

Fax (208)983-2376

☐ U.S. Mail

☐ Hand Delivered

☐ Overnight or Priority Mail

☒ Facsimile

Jon A. Stenquist

Moffatt Thomas Barrett Rock & Fields

PO Box 51505

Idaho Falls, ID 83405

Fax (208)522-5111

☐ U.S. Mail

☐ Hand Delivered

☐ Overnight or Priority Mail

☒ Facsimile

  
Charles Nickerson

FILED

CLERK OF DISTRICT COURT  
CLEARWATER COUNTY

2014 OCT 22 PM 4:50

CASE NO. CV2011-28

BY BO DEPUTY

1 CHARLES NICKERSON AND DONNA NICKERSON  
2 3165 Neff Rd  
3 Orofino, ID 83544

4 Defendants Pro Se

5  
6 **IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE**  
7 **OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER**  
8

9 PHH MORTGAGE,

10 Plaintiff/Counter-Defendant,

11 vs.

12  
13 CHARLES NICKERSON and DONNA  
14 NICKERSON, husband and wife;  
15 KNOWLTON & MILES PLLC; WELLS  
16 FARGO BANK, N.A., AND JOHN DOES I  
17 thru X

18 Defendant,

19 COLDWELL BANKER MORTGAGE, a/d/b/a  
20 of PHH MORTGAGE, and JPMORGAN  
21 CHASE BANK, N.A.

22 Third Party-Defendants.

Case No.: CV 2011-28

**AFFIDAVIT OF CHARLES NICKERSON**  
**IN SUPPORT OF EDITED**  
**MOTION TO SET ASIDE JUDGMENT**

23 I, CHARLES NICKERSON, deposes and states:

- 24 1. I am a Defendant in the above-entitled action.
- 25 2. I am competent to testify to these matters.
- 26 3. I have personally read Clearwater County instruments #214459, #214460, and #214462.
- 27 4. Exhibit 1 is a true and correct copy of Clearwater County instrument #214459.
- 28 5. Exhibit 2 is a true and correct copy of a letter and affidavit John L. O'Brien, Register of
- 29 Deeds for the Commonwealth of Massachusetts Southern Essex District Registry of
- 30 Deeds, provided to the Nickersons confirming Kirsten Bailey, the person who executed
- 31 the assignment from Chase to PHH, as a robo-signer.
- 32 6. I have personally read Exhibit 2.

1 In accordance with I.R.C.P. 7(d) and I.C. § 9-1406, I certify (or declare) under penalty of  
2 perjury pursuant to the laws of the State of Idaho that the foregoing is true and correct.

3  
4 DATED this 22<sup>nd</sup> day of October, 2014

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6 CHARLES NICKERSON  
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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 22<sup>nd</sup> day of October, 2014, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

NOTE: Apparently Kipp Manwaring is no longer working for Just Law. However, we have not received notice from Kipp Manwaring, Just Law or the Court regarding his withdrawal nor has anyone provided information on who is now representing Just Law in this case. Therefore, we are just serving Just Law Office.

Just Law Office

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Idaho Falls, ID 83405

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Honorable Michael J. Griffin

Idaho County District Court

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Grangeville, ID 83530

Fax (208)983-2376

☐ U.S. Mail☐ Hand Delivered☐ Overnight or Priority Mail☒ Facsimile

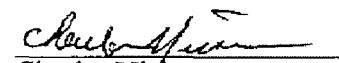
Jon A. Stenquist

Moffatt Thomas Barrett Rock &amp; Fields

PO Box 51505

Idaho Falls, ID 83405

Fax (208)522-5111

☐ U.S. Mail☐ Hand Delivered☐ Overnight or Priority Mail☒ Facsimile  
Charles Nickerson

214459

T-2

Instrument # 214459

CLEARWATER COUNTY, OROFINO, IDAHO

8-14-2010 02:40:55 No. of Pages: 2

Recorded for: CCLT

CARRIE BIRD

Fee: 6.00

Ex-Officio Recorder Deputy

Index to: ASSIGNMENT, DEED OF TRUST

*Cindy Downing*

**ASSIGNMENT OF DEED OF TRUST AND DEED OF TRUST NOTE**

KNOW ALL MEN BY THESE PRESENTS THAT FOR VALUE RECEIVED, J.P.

Morgan Chase Bank N.A., AS BENEFICIARY, hereinafter referred to as "Assignor", does

hereby, without recourse, sell, assign, endorse and transfer unto, PHH Mortgage Corporation all of its right, title and interest in and to the following:

1. That certain Deed of Trust Note in the original amount of \$285,000.00 and all monies and interest due or to become due thereon, which was executed by Donna Nickerson, a married person and Charles R. Nickerson, a married person, and made payable to Coldwell Bank Mortgage, a corporation; and

2. That certain Deed of Trust, which was executed by Donna Nickerson, a married person and Charles R. Nickerson, a married person, naming First American Title as Original Trustee, and subsequently to Just Law, Inc., as Successor Trustee, with Coldwell Bank Mortgage, a corporation as the Beneficiary, under the Deed of Trust recorded October 4, 2002 as Instrument No. 190568, in the records of Clearwater County, Idaho. The Beneficial interest of said Deed of Trust was subsequently assigned to J.P. Morgan Chase Bank N.A., recorded December 20, 2007 as Instrument No. 207590; and

3. All of that certain real property described in the Deed of Trust mentioned above and which is described as follows:

**Situate in the County of Clearwater, State of Idaho.**

**Township 36 North, Range 2 East, Boise Meridian**

**Section 22: SE1/4 NW1/4, SE1/4 SW1/4 NW1/4**

*Exhibit A 1*

This Assignment shall be binding upon the successors and assigns of the Assignor.

Dated this 9th day of June, 2010.



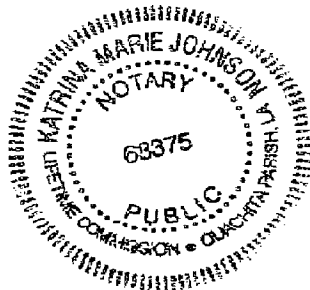
J.P. Morgan Chase Bank N.A.

Kirsten Bailey  
By: Kirsten Bailey, Vice President

STATE OF Louisiana )  
 ) ss.  
County of Ouachita )

On this 9th day of June, 2010, before me, the undersigned, a Notary Public in and for the State of Louisiana personally appeared Kirsten Bailey, known to me to be the Vice President of the corporation that executed this instrument or the person who executed the instrument on behalf of said corporation and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this 9th day of June, 2010.



Katrina Marie Johnson  
Notary Public for Quachita Parish  
Residing at 780 Kansas Lane, Monroe, LA  
Commission expires: Lifetime  
Katrina Marie Johnson #68375

ASSIGNMENT OF DEED OF TRUST AND DEED OF TRUST NOTE



## Commonwealth of Massachusetts

SOUTHERN ESSEX-DISTRICT REGISTRY OF DEEDS  
SHETLAND PARK  
45 CONGRESS STREET  
SUITE 4100  
SALEM, MASSACHUSETTS 01970

JOHN L. O'BRIEN, JR.

Register of Deeds  
(978) 542-1704

Fax: (978) 542-1706

e-mail: southernessexcustomerservice@sec.state.ma.us  
www.salemdeeds.com

*A division of the Secretary of the Commonwealth*  
WILLIAM FRANCIS GALVIN, SECRETARY

Donna & Charles Nickerson  
3165 Neff Rd.  
Orofino, ID 83544

Dear , Donna & Charles

In an attempt to provide you with more assistance, I have enclosed, an affidavit signed by me, as Register of the Southern Essex District Registry of Deeds, attesting to the presence of a robo-signed signature on your document as listed on McDonnell Property Analytics Approved Robo-signers List. If you are currently being foreclosed upon, this affidavit may be presented to your attorney, the lender, or the court to show that your chain of title has been corrupted. For those of you who are not in foreclosure, the affidavit may be presented to your current lender to show that a robo-signed document has in fact been recorded in your chain of title and be part of a request to investigate how this happened and what the lender is going to do to correct it.

Thank you for contacting us concerning your robo-signed document. Should you have any further questions or need assistance, please contact my Customer Service Department at 978-542-1704.

With Regards,

  
John O'Brien  
Register of Deeds

*Exhibit # 2*



JOHN L. O'BRIEN, JR.  
Register of Deeds  
(978) 542-1722  
Fax: (978) 542-1721  
e-mail: jlobrien@sec.state.ma.us  
www.salemdeeds.com

## *Commonwealth of Massachusetts*

SOUTHERN ESSEX DISTRICT REGISTRY OF DEEDS  
SHETLAND PARK  
45 CONGRESS STREET  
SUITE 4100  
SALEM, MASSACHUSETTS 01970

*A division of the Secretary of the Commonwealth*  
WILLIAM FRANCIS GALVIN, SECRETARY

### **AFFIDAVIT OF JOHN L. O'BRIEN, REGISTER OF DEEDS** **SOUTHERN ESSEX DISTRICT**

I, John L. O'Brien, Register of the Southern Essex District Registry of Deeds, do hereby swear or aver as follows:

1. As of June 2011 it has been my policy as follows:
  - a. IF THERE ARE VARIATIONS OF AN ALLEGED ROBO-SIGNER ON RECORD AT MY REGISTRY – I require that all documents sent for recording that are executed by that alleged robo-signer, be independently verified by an affidavit that the signature is in fact the signature of the named individual, prior to recording. (See Exhibit B attached hereto).
  - b. IF THERE ARE NO VARIATIONS OF AN ALLEGED ROBO or SURROGATE SIGNER ON RECORD AT MY REGISTRY – I record the documents and forward them to the Massachusetts Attorney General's Office for review and possible violation of a Crime Against Property, specifically MGL Chapter 266, Section 35A (b) (4).
2. I have instituted this policy based on the opinion of our forensic analyst, Marie McDonnell of McDonnell Property Analytics who has provided me with a list of robo and surrogate signers.

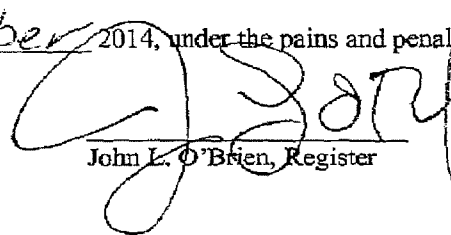


McDonnell defines a "robo-signer" as: *The person on a legal document processing assembly line whose only task is to sign previously prepared documents affecting title to real property in a robotic-like fashion without reading the documents or verifying the facts contained therein by reviewing primary source evidence. The robo-signer's mission is to expedite the documents' recordation in the public land records or in court proceedings. Additionally, robo-signers regularly fail to establish or simply do not have the authority to execute these documents on behalf of the legal title holder or principal on whose behalf they purport to act.*

McDonnell defines a "surrogate signer" as: *A person who signs a legal document on behalf of and in the name of another without reading it or understanding the document's contents; surrogate-signers are not authorized to execute these documents on behalf of the legal title holder or principal on whose behalf they purport to act.*

3. I am aware that Kirsten Bailey is an alleged robo or surrogate signer.


Signed this 2<sup>nd</sup> day of October, 2014, under the pains and penalties of perjury.

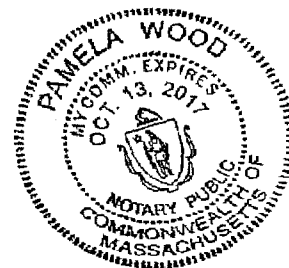
  
John L. O'Brien, Register

### COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

On this 2<sup>nd</sup> day of October, 2014, before me, the undersigned notary public, personally appeared John L. O'Brien, who is personally known to be the person whose name signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

  
Notary Name:  
My Commission Expires:  
Oct 13, 2017



## Affidavit in Support of Filing

I, \_\_\_\_\_ ("Declarant"), am a resident of \_\_\_\_\_  
County of \_\_\_\_\_, State of \_\_\_\_\_, and do hereby certify, swear or affirm,  
and declare that I am competent to give the following declaration based on my personal knowledge, and  
that the following facts and things are true and correct:

1. I am attorney duly licensed to practice law and in good standing in \_\_\_\_\_.
2. I am representing \_\_\_\_\_ (the "Client").
3. This Affidavit is in support of the following recording:
4. The purpose of the underlying filing(s) is/are:
5. I have personally communicated on or about [date] \_\_\_\_\_ with an employee or employees of  
the Client, whose names are \_\_\_\_\_, who (A) personally reviewed the documents being  
submitted for filing, (B) personally reviewed all required supporting documentation of corporate  
and personal authority ("Supporting Documents"), and (C) confirmed the accuracy of all  
documents and authenticity of all signatures, including the notary.
6. I have received and reviewed all Supporting Documentation.
7. Based on such communications, review of documents and my own personal inquiry into the  
Client's past and current standards and practices, I affirm that underlying filing(s) contain no false  
or questionable statements of fact or law.
8. Should any of the statements made herein be incorrect and the Recording corrupt or cloud the  
homeowner's chain of title, I will indemnify and hold anyone in the chain thereafter harmless.

PROPERTY ADDRESS: \_\_\_\_\_

9. I am fully aware of and understand M.G.L. c. 266 § 35A.

Signed under pains and penalties of perjury.

WITNESS my signature this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

\_\_\_\_\_  
Signature of Declarant

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned notary public, personally appeared  
\_\_\_\_\_, and proved to me through satisfactory evidence of identification, which  
was \_\_\_\_\_, to be the person who signed the preceding or attached document in my  
presence, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best  
of (his) (her) knowledge and belief.

\_\_\_\_\_  
Notary Public:  
My commission expires: \_\_\_\_\_  
(Official signature and seal of notary)

FILED  
CLERK OF DISTRICT COURT  
CLEARWATER COUNTY  
2014 OCT 28 PM 1:05  
CASE NO. CV 2011-28  
BY lf DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER

PHH MORTGAGE,

Plaintiff/Counter Defendant,

vs.

CHARLES NICKERSON and DONNA  
NICKERSON, husband and wife;  
KNOWLTON & MILES PLLC; WELLS  
FARGO BANK, N.A., AND JOHN  
DOES I thru X,

Defendants.

COLDWELL BANKER MORTGAGE  
a/d/b/a of PHH MORTGAGE, and  
JP MORGAN CHASE BANK, N.A.,

Third Party Defendants.

CASE NO. CV 011-28

ORDER

Charles and Donna Nickerson filed a Motion to Set Aside Judgment on October 20, 2014.

The court notified all parties that the court would decide the motion based upon affidavits and briefing without oral argument.

On October 22, 2014 the defendants filed an Edited Motion to Set Aside Judgment.

The court will decide the Edited Motion to Set Aside Judgment on affidavits and briefing without oral argument.

All parties may submit affidavits and briefing by November 5, 2014.

Dated this 28<sup>th</sup> day of October, 2014.

A handwritten signature in blue ink, appearing to read "MJG", is written over a horizontal line.

Michael J. Griffin  
District Judge

# CERTIFICATE

I, the undersigned Deputy Clerk of the above entitled Court, do hereby certify that a true and accurate copy of the foregoing was mailed to, faxed to, or delivered by me on the 28th day of October, 20 14, to:

Jon a. Stenquist

Moffatt, Thomas, Barrett, Rock & Fields, Chartered

900 Pier View Drive, Suite 206

P.O. Box 51505

Idaho Falls, ID 83402



U. S. Mail

Charles Nickerson

Donna Nickerson

3165 Neff Road

Orofino, ID 83544



U. S. Mail

Just Law Office

P.O. Box 50271

Idaho Falls, ID 83405



U. S. Mail



Carrie Bird, Clerk of Court

By: C. Hering

Deputy Clerk

CLERK OF DISTRICT COURT  
CLEARWATER COUNTY

2014 NOV -3 AM 11: 50

CASE NO. W2011-28BY BP DEPUTY

CHARLES NICKERSON AND DONNA NICKERSON  
3165 Neff Rd  
Orofino, ID 83544

Defendants Pro Se

**IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE  
OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER**

PHH MORTGAGE,

Plaintiff/Counter-Defendant,

vs.

CHARLES NICKERSON and DONNA  
NICKERSON, husband and wife;  
KNOWLTON & MILES PLLC; WELLS  
FARGO BANK, N.A., AND JOHN DOES I  
thru X

Defendant,

COLDWELL BANKER MORTGAGE, a/d/b/a  
of PHH MORTGAGE, and JPMORGAN  
CHASE BANK, N.A.

Third Party-Defendants.

Case No.: CV 2011-28

**MOTION TO SET SCHEDULE ON  
DEFENDANTS' I.R.C.P. 60(b) MOTIONS**

COMES NOW, Defendants, Charles and Donna Nickerson, request the Court accept its responsibility to acknowledge and rule against the fraud perpetrated on the Court by Chase, PHH, and their attorneys of record. The Nickersons have filed three I.R.C.P. 60(b) motions: Motion for Relief from Judgment or Order filed on October 6, 2014; Motion to Set Aside Judgment filed on October 20, 2014, with a subsequent Edited Motion to Set Aside Judgment filed on October 22, 2014; and Motion to Set Aside Judgment Based on Supplemental Evidence filed on October 21, 2014. The motions and the affidavits supporting these motions provide evidence of Mistake, Surprise, Excusable Neglect, New Evidence, Fraud, Misconduct and Fraud on the Court. According to I.A.R. 13(b)(6) and the Idaho Supreme Court, the District Court maintains the responsibility to rule on these motions even during the appeal process, and thus, this Court must not continue to ignore the Nickersons I.R.C.P. 60(b) motions. This Court has set

1 a schedule for only one of the motions and the unjustified delay in setting schedules for the other  
2 motions has and is unduly prejudicing the Nickersons and threatening their ability to secure  
3 justice in this case by allowing opposing counsel more time to craft and create further fraudulent  
4 evidence and responses as they have done throughout these proceedings. Therefore, the  
5 Nickersons request this Court set the schedule for the three motions, uphold the law and the  
6 principles set forth in the Idaho Rules of Civil Procedure to ensure equal access to justice based  
7 on the merits, honor its sworn duty to consider the evidence before it, and reverse the summary  
8 judgment rulings in favor of Chase and PHH as the evidence of fraud provided precludes any  
9 summary judgment in favor of Chase or PHH.

10 Wherefore, the Nickersons request a combined schedule be set on their three I.R.C.P.  
11 60(b) motions so that this case may be determined justly, impartially and on the merits, and not  
12 upon the legal chicanery, fraud and misconduct of the opposing parties, their counsels and their  
13 accomplices.

14  
15 DATED this 3<sup>rd</sup> day of November, 2014

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 3rd day of November, 2014, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

NOTE: Apparently Kipp Manwaring is no longer working for Just Law. However, we have not received notice from Kipp Manwaring, Just Law or the Court regarding his withdrawal nor has anyone provided information on who is now representing Just Law in this case. Therefore, we are just serving Just Law Office.

Just Law Office

381 Shoup Ave.

PO Box 50271

Idaho Falls, ID 83405

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Idaho County District Court

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Charles Nickerson



FILED  
CLERK OF DISTRICT COURT  
CLEARWATER COUNTY

2014 NOV -5 AM 9:55

CASE NO. CV-2011-28

BY CP DEPUTY

CHARLES C. JUST, ESQ. – ISB 1779  
AMELIA A. SHEETS, ESQ. – ISB 5899  
JUST LAW OFFICE  
381 Shoup Avenue  
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Attorneys for Plaintiff PHH Mortgage  
and Third-Party Defendant Coldwell Banker Mortgage  
a d/b/a of PHH Mortgage

**IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT  
STATE OF IDAHO, COUNTY OF CLEARWATER**

PHH MORTGAGE,

Plaintiff/Counter-Defendant,

vs.

CHARLES NICKERSON and DONNA  
NICKERSON, husband and wife;  
KNOWLTON & MILES PLLC; WELLS  
FARGO BANK, N.A., and JOHN DOES I thru  
X,

Defendant(s).

CHARLES NICKERSON and DONNA  
NICKERSON, husband and wife,

Counter-Claimant/Third Party Plaintiff,

vs.

COLDWELL BANKER MORTGAGE, a d/b/a  
of PHH MORTGAGE; and JP MORGAN  
CHASE BANK, N.A.

Third Party Defendants.

Case No. CV-2011-28

**RESPONSE IN OPPOSITION  
TO THE NICKERSONS'  
MOTIONS**

COMES NOW, Plaintiff PHH Mortgage, by and through its attorney of record, Just Law, Office, and responds in objection and opposition to the Nickersons' Motion for Relief from Judgment or Order; the Nickersons' Motion to Set Aside Judgment (Edited Motion to Set Aside Judgment); and the Nickersons' Motion to Set Aside Judgment Based on Supplemental Evidence of Fraud on the Court.

**GENERAL OBJECTIONS:**

The issues presented in the Nickersons' motions in support of their request for Motion for Relief and Motions to Set Aside Judgment are a continuation of the alleged issues and statements made in the Nickersons' Motion for Summary Judgment, Motion for Reconsideration and other pleadings filed with this court. These issues have been resolved by the court in its previous orders regarding summary judgment and as such should be dismissed as all the foregoing issues are *res judicata*.

It is Plaintiff's position that the numerous motions filed by the Nickersons are an attempt to circumvent the appeal and to delay their filing of Appellants' Brief. The Nickersons' filed their Notice of Appeal on or about May 27, 2014. Accordingly, the Court of Appeals sent out a briefing schedule setting Appellants' Brief due September 2, 2014. On or about September 16, 2014, the Nickersons' filed an Amended Notice of Appeal pursuant to the Court's Order Re: Caption. The Court of Appeals then extended the due date for Appellants' Brief to November 12, 2014.

**PLAINTIFF'S OBJECTION TO THE NICKERSONS' MOTION FOR RELIEF FROM JUDGMENT OR ORDER:**

The Nickersons' filed their Motion for Relief from Judgment or Order on October 6, 2014, based upon I.R.C.P. 60(b) sections (1) (2) (3) and (6).

Plaintiff again asserts that *res judicata* is applicable in the claims brought forth in the Defendants' motion for relief, for the reasons stated herein.

**Mistake**

The Nickersons are alleging a mistake of the Court. Such allegation is not applicable and must be dismissed. In order for mistake to be found, there must be a mistake of a party.

Surprise

The Nickersons are alleging Surprise due to hearings being held by the court in November 2012 and again in early 2013. The Nickersons were represented by counsel at that time. An order granting the withdrawal of the Nickersons' counsel of record was entered on or about May 15, 2013.

The Nickersons cannot claim "Surprise" due to the withdrawal of their attorney. Issues remained in the pending litigation and continued to be litigated through February 11, 2014, at the hearing for Summary Judgment.

Excusable Neglect

Excusable neglect is determined by examining what a reasonably prudent person would do under similar circumstances. *Bull v. Leake*, 109 Idaho 1044, 12 P.2d 745 (Ct. App. 1985).

A claim that their reliance on their attorney of record constitutes excusable neglect is not an applicable claim. A reasonably prudent person would maintain regular and consistent contact with his or her attorney in regards to the status of a pending litigation. The fact that the Nickersons' claim for excusable neglect indicates they were not in contact with their attorney from approximately November 2012 until August 2014, does not constitute excusable neglect.

New Evidence, I.R.C.P. 60(b)(2)

The Nickersons' claim of new evidence is not timely. The evidence suggested in their Motion was a part of the court's record and the court has previously ruled on the same in its Order Granting PHH's Motion for Summary Judgment in Part on November 16, 2014, and its corresponding Memorandum Opinion Re: PHH's Motion for Summary Judgment.

Fraud, I.R.C.P. 60(b)(3)

Pursuant to applicable case law, fraud will be found "only in the presence of such tampering with the administration of justice as to suggest a wrong against the institutions set up to protect and safeguard the public." *Catledge v. Transport Tire Co.*, 107 Idaho 602, 691 P.2d 1217 (1984). The Nickersons' Motions and accompanying Affidavits do not meet this standard.

Further, the Nickersons' merely have re-recited claims that have been ruled upon by this court, and does not satisfy the proper standard for fraud. The Nickersons' allegations of "fraud" are merely statements of the Defendants. All issues outlined on pages 13-14 of the Nickersons' Motion for Relief have been adjudicated in Summary Judgment. *Tyler v. Keeney*, 128 Idaho 524, 915 P.2d 1382 (Ct. App. 1996).

**Misconduct**

The Nickersons' claims of "misconduct" encompass the issues regarding deposition. The Nickersons' raised this issue on May 16, 2014, in their Motion to Strike Deposition(s). The pending motions were filed post-summary judgment, and the Court's Order for Summary Judgment was entered on April 4, 2014. At the time the Nickersons filed their motion to strike depositions, they did not set the motion for a hearing, nor did they present the court with a proposed order. The court heard the Nickersons' Motion for Justice, filed that same date on May 15, 2014. The court entered its order dismissing motions to reconsider on June 11, 2014.

Therefore, *res judicata* applies to the Nickersons' claim of misconduct.

**PLAINTIFF'S OBJECTION TO THE NICKERSONS' MOTION TO SET ASIDE DEFAULT (EDITED MOTION TO SET ASIDE DEFAULT):**

The Nickersons' motion in part addresses the "robo-signing" of an assignment attached as Exhibit B to Plaintiff's complaint in this action.

It is Plaintiff's position that *res judicata* applies to this claim, as the Nickersons made this claim in their Motion for Summary Judgment and corresponding Memorandum in Support of Motion for Summary Judgment filed with this court on or about December 17, 2013. The same was heard at the hearing on Motions for Summary Judgment on February 11, 2014. This court entered its Memorandum Opinion Re: Motions for Summary Judgment on April 4, 2014.

Plaintiff asserts the Nickersons claim to set aside the default is not timely.

Further, the submission of a letter from John O'Brien of the Commonwealth of Massachusetts and his corresponding Affidavit dated October 2, 2014 is not timely and should be stricken.

Additionally, O'Brien's Affidavit clearly states that "as of June 2011 it has been my policy..." The assignment in reference in this action was signed and notarized on or about June 9, 2010, prior to any policy instated on or after June 1, 2011. The policy and letter are not relevant to the facts in this action, and therefore should not be considered by this court.

**PLAINTIFF'S OBJECTION TO THE NICKERSONS' MOTION TO SET ASIDE JUDGMENT BASED ON SUPPLEMENTAL EVIDENCE OF FRAUD ON THE COURT:**

The Nickersons' motion to set aside judgment based on supplemental evidence of fraud on the court should be dismissed, as it fails to meet the fraud standard referenced herein.


Further, the Nickersons' motion should be dismissed as the Nickersons' filed an initial objection to Casperites' Second Affidavit on March 25, 2014. In its Memorandum Opinion Re: Plaintiff's Second Motion for Summary Judgment and Nickerson's Motion Summary Judgment entered April 4, 2014, this court held:

The Nickersons' submitted additional documents and statements after the hearing on the motions for summary judgment. The court will not consider those documents as they were not filed timely, and the Nickersons did not file a motion to reconsider.

Further, In the Nickersons' Objection to Second Affidavit of Ronald E. Casperite dated March 24, 2014, the Nickersons' asserted a claim of action regarding the notary block on the affidavit. Clearly, this issue was considered by the court in its decision for summary judgment as a non-issue.

The submission of a letter dated June 9, 2014 from James F. Zombeck of the State of New Jersey Department of the Treasury, Division of Revenue & Enterprise Services regarding New Jersey statute on notary is not timely and should be stricken.

**DATED** this 5 day of November 2014.

  
\_\_\_\_\_  
Amelia A. Sheets, Esq.  
Attorney for Plaintiff

**CERTIFICATE OF MAILING**


I HEREBY CERTIFY that on the 7<sup>th</sup> day of November 2014 a true and correct copy of the foregoing document was served upon the person or persons named below, in the manner indicated.

Charles and Donna Nickerson  
3165 Neff Road  
Orofino, Idaho 83544

☐ Hand Delivered  
☒ U.S. Mail, Postage Prepaid  
☐ Facsimile  
☐ Other \_\_\_\_\_

Honorable Michael J. Griffin  
Idaho County District Court  
381 West Main  
Grangeville, Idaho 83530

☐ Hand Delivered  
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☐ Other \_\_\_\_\_

  
Leslie Northrup  
Paralegal

FILED

CLERK OF DISTRICT COURT  
CLEARWATER COUNTY

2014 NOV -5 AM 9:55

CASE NO. CV 2011-28

BY [Signature] DEPUTY

CHARLES C. JUST, ESQ. - ISB 1779  
AMELIA A. SHEETS, ESQ. - ISB 5899  
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Attorneys for Plaintiff PHH Mortgage  
and Third-Party Defendant Coldwell Banker Mortgage  
a d/b/a of PHH Mortgage

**IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT  
STATE OF IDAHO, COUNTY OF CLEARWATER**

PHH MORTGAGE,

Plaintiff/Counter-Defendant,

vs.

CHARLES NICKERSON and DONNA  
NICKERSON, husband and wife;  
KNOWLTON & MILES PLLC; WELLS  
FARGO BANK, N.A., and JOHN DOES I thru  
X,

Defendant(s).

CHARLES NICKERSON and DONNA  
NICKERSON, husband and wife,

Counter-Claimant/Third Party Plaintiff,

vs.

COLDWELL BANKER MORTGAGE, a d/b/a  
of PHH MORTGAGE; and JP MORGAN  
CHASE BANK, N.A.

Third Party Defendants.

Case No. CV-2011-28

**PLAINTIFF'S MOTION TO  
STRIKE EXHIBITS  
SUBMITTED IN AFFIDAVITS  
OF CHARLES NICKERSON**

COMES NOW, Plaintiff PHH Mortgage, by and through its attorney of record, Just Law, Office, and requests the following exhibits be stricken from the Affidavits of Charles Nickerson filed with this court.

**AFFIDAVIT IN SUPPORT OF MOTION FOR RELIEF FROM JUDGMENT:**

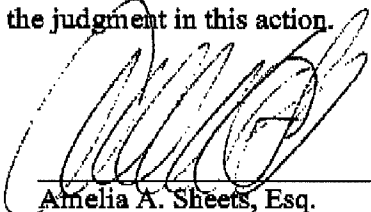
Paragraph 18 references a letter attached as an exhibit. The content of the letters is not relevant as the issue has been adjudicated and *res judicata* applies. In addition, the letter constitutes hearsay and hearsay within hearsay is barred by I.R.E. 803 and 804.

**AFFIDAVIT OF CHARLES NICKERSON IN SUPPORT OF MOTION TO SET ASIDE JUDGMENT (EDITED AFFIDAVIT OF CHARLES NICKERSON IN SUPPORT OF MOTION TO SET ASIDE JUDGMENT):**

Paragraph 7 references a letter attached as an exhibit. The content of that letter is not relevant as the issue has been adjudicated and *res judicata* applies. The letter references an attached Affidavit, which affidavit is dated June 2011, the issues in the current action are prior to 2011, as such the exhibit is not relevant to the current action. In addition, the letter and affidavit constitute hearsay and hearsay within hearsay is barred by I.R.E. 803 and 804.

Accordingly, the above identified paragraphs and exhibits should be stricken from the affidavit and not considered for purposes of setting aside the judgment in this action.

DATED this 5 day of November 2014.

  
\_\_\_\_\_  
Amelia A. Sheets, Esq.  
Attorney for Plaintiff



**CERTIFICATE OF MAILING**

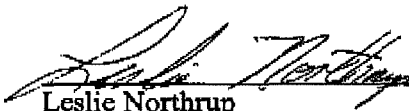
I **HEREBY CERTIFY** that on the 5<sup>th</sup> day of November 2014 a true and correct copy of the foregoing document was served upon the person or persons named below, in the manner indicated.

Charles and Donna Nickerson  
3165 Neff Road  
Orofino, Idaho 83544

☐ Hand Delivered  
☒ U.S. Mail, Postage Prepaid  
☐ Facsimile  
☐ Other \_\_\_\_\_

Honorable Michael J. Griffin  
Idaho County District Court  
381 West Main  
Grangeville, Idaho 83530

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Leslie Northrup  
Paralegal

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CASE NO. W2011-28 ✓

BY BP DEPUTY

CHARLES NICKERSON AND DONNA NICKERSON  
3165 Neff Rd  
Orofino, ID 83544

Defendants Pro Se

**IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE  
OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER**

PHH MORTGAGE,

Plaintiff/Counter-Defendant,

vs.

CHARLES NICKERSON and DONNA  
NICKERSON, husband and wife;  
KNOWLTON & MILES PLLC; WELLS  
FARGO BANK, N.A., AND JOHN DOES I  
thru X

Defendant,

COLDWELL BANKER MORTGAGE, a/d/b/a  
of PHH MORTGAGE, and JPMORGAN  
CHASE BANK, N.A.

Third Party-Defendants.

Case No.: CV 2011-28

**MOTION TO RECONSIDER ORDER  
FILED OCTOBER 28, 2014, PRIOR TO  
RENDERING JUDGMENT ON THE  
NICKERSONS' 60(b) EDITED MOTION  
TO SET ASIDE JUDGMENT**

COMES NOW, Defendants, Charles and Donna Nickerson, request the Court reconsider its' order filed on October 28, 2014, in accordance with I.A.R. 13(b)(7) and I.R.C.P. 11(a)(2)(B).

On October 21, 2014, the Court entered an order regarding the Nickersons' Motion to Set Aside Judgment stating the Plaintiff had until November 5, 2014, to file a responsive brief and affidavits and denying oral argument. Then, in response to the Nickersons Edited Motion to Set Aside Judgment (See Letter to Clerk filed with the Edited Motion), the Court entered an order on October 28, 2014, which states, "All parties may submit affidavits and briefing by November 5, 2014," and the Edited Motion to Set Aside Judgment will be decided without oral argument.

The Nickersons were served, according to the Plaintiff's certificate of mailing, the Plaintiff's response to the Nickersons' Edited Motion to Set Aside Judgment by mail on November 5, 2014. The Plaintiff also included their response to the Nickersons' Motion for

1 Relief From Judgment or Order and Motion to Set Aside Judgment Based on Supplemental  
2 Evidence. The Plaintiff's response was not delivered to the Nickersons by the USPS until  
3 November 7, 2014. This made it impossible for the Nickersons to file a reply brief to the  
4 Plaintiff's response to the Nickersons' Edited Motion to Set Aside Judgment by November 5,  
5 2014, in accordance with the Court's order because of the concurrent deadline set for the parties  
6 by the Court in its order. The timing of the Plaintiff's response and the concurrent schedule set  
7 forth in the Court's order created impossibility for the Nickersons and circumvented their rights  
8 to reply to objections made by the Plaintiff prior to a hearing or judgment. To further complicate  
9 the matter, the Plaintiff also filed a Motion To Strike with their Response on November 5, 2014.  
10 Based on previous determinations and rulings of this Court, this Court may decide to consider  
11 this Motion to Strike along with the Edited Motion To Set Aside Judgment in rendering its  
12 ruling, and thus, the Nickersons must be allowed to respond to the Plaintiff's Motion to Strike.  
13 Therefore, the Court must reconsider its order setting the time for all parties to file affidavits and  
14 briefs regarding the Nickersons Edited Motion to Set Aside Judgment in order to allow time for  
15 the Nickersons to reply to the Plaintiff's objections and respond to the Plaintiff's Motion to  
16 Strike in order to ensure and protect all parties rights in this matter in accordance with the Rules  
17 of Civil Procedure (I.R.C.P. 7 (b)(3)(E)) which attempt to provide protection against prejudicial  
18 and premature rulings and attempt to guarantee all parties have equal access to justice and  
19 opportunity to present the merits of their case.

20 Wherefore, since the Court has denied oral argument on the Nickersons' Edited Motion  
21 to Set Aside Judgment and the Court's order made it impossible for the Nickersons to reply to  
22 the Plaintiff's objections, the Nickersons request this Court allow them time to file their reply  
23 brief in support of their Edited Motion to Set Aside Judgment prior to ruling on their Edited  
24 Motion to Set Aside Judgment. Further, the Nickersons request this Court allow them time to  
25 respond to the Plaintiff's newly filed Motion to Strike prior to ruling on their Edited Motion to  
26 Set Aside Judgment. In addition, the Nickersons request the Court recognize the confusion its  
27 silence on the Nickersons' Motion for Relief from Judgment or Order and Motion to Set Aside  
28 Judgment Based on Supplemental Evidence has created, acknowledge its responsibility to  
29 consider these motions, and set a time for the Nickersons to respond to the Plaintiff's objections  
30 on these motions.

31 DATED this 10<sup>th</sup> day of November, 2014

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CHARLES NICKERSON

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 10<sup>th</sup> day of November, 2014, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

NOTE: Apparently Kipp Manwaring is no longer working for Just Law. However, we have not received notice from Kipp Manwaring, Just Law or the Court regarding his withdrawal nor has anyone provided information on who is now representing Just Law in this case. Therefore, we are just serving Just Law Office.

Just Law Office

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PO Box 50271

Idaho Falls, ID 83405

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Charles Nickerson

FILED

CLERK OF DISTRICT COURT  
CLEARWATER COUNTY

2011 NOV 12 PM 4:31

CASE NO. CV 2011-28

BY   Jf   DEPUTY

CHARLES NICKERSON AND DONNA NICKERSON  
3165 Neff Rd  
Orofino, ID 83544

Defendants Pro Se

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE  
OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER

PHH MORTGAGE,

Plaintiff/Counter-Defendant,

vs.

CHARLES NICKERSON and DONNA  
NICKERSON, husband and wife;  
KNOWLTON & MILES PLLC; WELLS  
FARGO BANK, N.A., AND JOHN DOES I  
thru X

Defendant,

COLDWELL BANKER MORTGAGE, a/d/b/a  
of PHH MORTGAGE, and JPMORGAN  
CHASE BANK, N.A.

Third Party-Defendants.

Case No.: CV 2011-28

REPLY BRIEF IN SUPPORT OF 60(b)  
MOTIONS

The Nickersons reply to PHH's response in opposition to their motions as follows.

**Reply to General Objections:**

No resolution based on the factual merits of the case has occurred in this litigation due to the malicious and criminal actions of PHH and their accomplices. No relief has been granted to the Nickersons in this lingering nightmare initiated through the incompetent record keeping, false credit reporting and fraudulent Non-Judicial Foreclosure action by PHH and Chase which seized the Nickersons assets and rendered years of perfect credit, solid investments, and a strong financial portfolio virtually non-existent. No resolution has occurred because of the fraud perpetrated on the Court and against the Nickersons by PHH and Chase. The truth is the Nickersons are an innocent, hardworking family with a proper regard for their obligations, whose property has been wrongfully stolen and lives have been undeservedly assaulted due to the

1 fraudulent, malicious prosecution of this case by PHH and Just Law, the criminal silence and  
2 willful deception of their accomplices Chase and Moffatt Thomas, and the alarming failure of  
3 this Court to see the fraud being perpetrated, recognize the Nickersons interests were not being  
4 properly represented by counsel, and persistently refusing to consider evidence presented to the  
5 Court. The Nickersons are not attorneys; but unlike the attorneys and opposing parties involved  
6 in this action, the Nickersons have consistently presented the truth; accurately and appropriately  
7 applied laws, case laws and the Idaho Rules of Civil Procedure; and have conducted themselves  
8 in honest, truthful and professional manners. On the other hand, PHH is once again attempting to  
9 use legal chicanery to thwart justice, mislead this Court, and commit fraud on the Court. In  
10 PHH's general objection, they claim "all of the foregoing issues are *res judicata*." The doctrine  
11 of *res judicata* applies to the future litigation of the same causes of action involving the same  
12 parties not to litigation that is ongoing and not to I.R.C.P. 60(b). The Idaho Court of appeals in  
13 its discussion of a *res judicata* argument stated, "Moreover, where a party seeks to avoid the  
14 operation of a judgment on the basis of fraud, mistake, or other justifiable reason, I.R.C.P. 60(b)  
15 permits the court to set aside the judgment upon timely motion." *Harper v. Harper*, 122 Idaho  
16 535, 835 P.2d 1346 (1992). Regarding the issue of *res judicata* with respect to I.R.C.P. 60(b), the  
17 Idaho Supreme Court has found, "It is, of course, the general rule that once a judgment issues it  
18 is *res judicata* with respect to all issues which were or could have been litigated. There are a  
19 number of avenues, however, for attacking a judgment... Finally, provision for the modification  
20 of all final judgments is made in I.R.C.P. 60(b). The rule provides for two means of attacking a  
21 decree: first, by motion, for the reasons set out in 60(b)(1) through (6)." *Compton v. Compton*,  
22 101 Idaho 328, 612 P.2d 1175 (1980). The Idaho Supreme Court makes it perfectly clear the  
23 doctrine of *res judicata* does not apply to I.R.C.P. 60(b) motions. In addition, I.R.C.P. 60(b)  
24 states, "This rule does not limit the power of a court to: (i) entertain an independent action to  
25 relieve a party from a judgment, order or proceeding..." Further, even though this Court passed a  
26 final judgment without considering genuine issues of material fact that were in its chambers, this  
27 case is not over and has not been fully litigated. First, this Court has stated it did not consider the  
28 issues of fraud because fraud was allegedly not pled, and when the Nickersons attempted to  
29 amend their pleadings to include fraud, the Court would not permit it because of alleged timing.  
30 Second, this Court refused to consider any of the Nickersons' motions post its final judgment  
31 because of timing, even though the Nickersons timely requested a continuance prior to the  
32 hearing so they could present evidence and expand the factual record. This Court stated the



1 Nickersons missed their opportunity for any reconsideration because they allegedly missed their  
2 deadline to file their motions by three days. The Nickersons were served the final judgment by  
3 mail and understood (and still understand), according to every legal authority and counselor they  
4 could (and can) find, and I.R.C.P. 6(e)(1), they had three extra days to file. Third, this Court  
5 refused to consider any of the evidence or other facts discovered and presented to the Court after  
6 the Summary Judgment hearing solely because of timing, even though 1) the Judge granted the  
7 Nickersons permission to submit the evidence and facts at the hearing, 2) provided the address to  
8 his personal chambers to send it to, 3) knew he had intentionally ignored the Nickersons Request  
9 for Continuance and the Clerk's repeated requests made on behalf of the Nickersons that he  
10 make his determination regarding the Motion for Continuance in time for them to file their  
11 replies, then delayed making a decision regarding it until the start of the hearing when it was too  
12 late for the Nickersons to file their replies prior to the hearing. Therefore, this Court has not  
13 heard, considered or adjudicated any of the issues the Nickersons have presented in their 60(b)  
14 motions. The reason I.R.C.P. 60(b) exists is to allow the Court to consider the new evidence,  
15 fraud, misconduct, mistakes, surprise, excusable neglect and fraud on the Court that has colored  
16 or prejudiced any prior adjudication and decisions of the Court, and provide a method to allow  
17 the court to reconsider mistakes in judgment or opinion, grant relief from judgment, and set aside  
18 judgment. Therefore, the doctrine of *res judicata* does not apply to these motions. None of these  
19 issues have been adjudicated, this litigation is ongoing and I.R.C.P. 60(b) provides an avenue to  
20 grant relief from judgment or order and to set aside judgment.

21 For the record, the Nickersons are not attempting to delay the appeal as claimed by PHH.  
22 The Nickersons are exercising their legal rights to secure justice based upon all evidence, issues  
23 and claims as protected and provided for in the Idaho Rules of Civil Procedure and Idaho  
24 Appellate Rules. Prior to taking the next steps and seeking further courts, jurisdictions and  
25 agencies to find justice, the Nickersons are graciously offering this Court the opportunity to  
26 utilize the power granted it to uphold the laws of the State of Idaho and the United States of  
27 America, to reconsider its opinions, and to reverse its prejudicial rulings. The Nickersons have  
28 suffered and are continuing to suffer extreme, substantial and significant losses and damages due  
29 to the criminal actions of PHH and Chase. How dare PHH or Just Law have the audacity to  
30 accuse the Nickersons of delaying any possible or potential avenue to find relief. PHH, Just Law  
31 and Chase have been viciously and criminally attacking the Nickersons and their financial  
32 resources for years. If just one of them, just one time, even remotely told the truth, or anything

1 that resembled the truth, this case would be over, and all parties involved in this case know it. If  
2 this Court would have or would hold them accountable one time, in any way, for their lies,  
3 misrepresentations and criminal actions, PHH and their accomplices would have stopped their  
4 abuse, and this assault on the Nickerson Family would have been over long ago. Think about it.  
5 Unless a criminal has some religious or spiritual awakening that miraculously stirs his  
6 conscience, why would any criminal willingly admit to felonious crimes that demand substantial  
7 fines and jail time, and make amends for their wrongdoings, when there is no threat of a  
8 consequence or other punishment forthcoming. Instead of accusing the Nickersons of delaying  
9 litigation, Amelia Sheets and the other Charles Just mortgage abuse piranhas, should be eternally  
10 grateful that Charles and Donna Nickerson are the caliber of people who choose to seek justice in  
11 legal ways. In light of the extreme physical, financial and emotional assaults waged against the  
12 Nickerson Family, the Nickersons have exercised extreme constraint and heroic professionalism  
13 throughout this terroristic assault on their family in Clearwater County, Idaho. As a matter of  
14 fact, the most recent non-comprehensive calculation of monetary damages, which was provided  
15 to Chase in September 2014 when Chase contacted the Nickersons regarding a settlement offer,  
16 was over \$5 million in documentable monetary damages alone. This is not some Podunk  
17 Clearwater County Idaho case where shame, shame, shame two drunks got in a fight and one  
18 drunk stole \$59.20 from another drunk passed out on the side of the street. This case involves  
19 high level corporate corruption, grand larceny, embezzlement of escrow funds, felonious  
20 document preparation, targeted assault on the Nickersons financial portfolio, and the list goes on.  
21 This is not some legal game to the Nickersons. The Nickersons did not gamble with the security  
22 of their life and life savings. The Nickersons have been robbed and the State of Idaho has yet to  
23 stop it. The Nickersons have not and are not delaying anything. The Nickersons have not, are  
24 not, nor do they intend to sleep on their rights. Rather, the Nickersons are screaming for this  
25 Court to wake up, stand up to these banksters, defend the innocent it has sworn to protect, and  
26 honor the robe it wears. The only delay in this entire case that is not the fault of PHH and their  
27 accomplices is that this Court has yet to consider the evidence presented and stop the abuse,  
28 damages and losses being suffered by the Nickersons. To say the Nickersons have suffered  
29 immensely as a result, and that PHH, Chase and Clearwater County are exponentially increasing  
30 their exposure and liability, is an understatement of astronomical proportions. The time for relief  
31 is now. Any delays are the sole responsibility and result of the ongoing lies, deception and fraud  
32 of PHH, Chase and their accomplices, and the unlawful failure of this Court to hold them



1 accountable. The Nickersons generally and comprehensively object to the Plaintiff's general  
2 objections.

3 **Reply to Plaintiff's Objection to Motion for Relief from Judgment or Order:**

4 As detailed above, PHH's claim of *res judicata* is baseless and entirely without merit.

5 **Mistake**

6 PHH claims mistakes of the Court are not applicable, but PHH provides no legal  
7 authority for their conclusory statement. However, the Nickersons did cite legal authority stating  
8 mistakes of the Court are applicable to 60(b) motions.

9 "Clearly, too, the mistake, inadvertence, surprise or excusable neglect need not be that of  
10 the party making the motion. In 7 Moore's Federal Practice, Sec. 60.22[2], page 247, in  
11 discussing Federal Rule 60(b)(1), which is identical with Idaho's Rule of the same  
12 number, after commenting on the old rule which restricted relief to cases involving  
13 movant's own mistakes, etc., it is said: "Relief can now be had under 60(b)(1) not only  
14 for the mistake, etc. of the moving party, but also from that of *other parties to the action,*  
15 *the clerk,* and even *the court.* (Emphasis added.)" *Sines v. Blaser*, 98 Idaho 435, 566 P.2d  
16 758 (1977)

17 In addition, PHH does not address the other mistakes cited by the Nickersons, and thus,  
18 PHH is admitting they are legitimate mistakes warranting relief from judgment. Based on PHH's  
19 admissions, the Nickersons request the Court immediately grant relief from judgment.

20 **Surprise**

21 As attested to in John Mitchell's affidavit, the Nickersons were not notified by their  
22 attorney of the Summary Judgment proceedings that occurred prior to their attorney's withdrawal  
23 or of his withdrawal. Rather, the Nickersons were told their counsel was actively pursuing all  
24 civil and criminal remedies available before and after his formal withdrawal dates from the case.  
25 Therefore, the issue of surprise does apply and certainly warrants the Court providing relief from  
26 judgment regarding the dismissal of the Nickersons' counterclaim and third party complaint.

27 Additionally, as stated in their motion, the Nickersons were surprised by the status of the  
28 case after their attorney's withdrawal and subsequent termination of his licensure, and were not  
29 provided with the opportunity to present their claims prior to PHH's second motion for summary  
30 judgment but were instead required to react to the motion without adequate knowledge of what  
31 had taken place up to that point, were unable to fully prosecute their case, and were prevented  
32 from amending their pleadings. Therefore, the issue of surprise does apply and certainly warrants  
the Court granting relief from judgment and immediately setting aside judgment.

**Excusable Neglect**

Once again PHH is misrepresenting what the Nickersons have stated and the evidence presented into the record has demonstrated by claiming, "the fact that the Nickersons' claim for excusable neglect indicates they were not in contact with their attorney from approximately November 2012 until August 2014..." The Nickersons have clearly testified they were in contact with their former attorney, who repetitively told them it was an open and shut case and that everything was OK. Their former attorney has confirmed they were in contact, and has, among other confessions, testified, "I did not keep the Nickersons informed about the status of their case after their depositions were taken, did not tell them about a summary judgment motion, the summary judgment decision, told them an appeal had been filed when it had not and withdrew from the case without telling them." The Nickersons understanding and belief was their attorney was taking care of everything and were following his strict instructions to "not worry and let him do his job." During this time, the Nickersons acted as any reasonably prudent person would be expected to by trusting their attorney and his firm's legal knowledge, opinions and statements; accepting his updates as truthful and legitimate; assuming his answers to their questions and concerns were honest and forthright; believing he was presenting the battery of evidence provided to him to properly represent their interests to the Court and other proper authorities; trusting he was doing everything within his power to secure relief for them; and thus, their claim of excusable neglect has merit and must be considered.

For this Court to rule the Nickersons claim for excusable neglect has no merit would be an extraordinary ruling with extreme ramifications for the integrity, reliability and sobriety of the Idaho judicial system and the civil procedures that govern it. The logical result of such a ruling if left to its natural conclusion would be a battering of citizen confidence currently entrusted in Idaho attorneys and the struggling accountability structure that has left Idaho with a D- rating in state integrity ratings. In essence, denying the Nickersons their right to claim excusable neglect is a glaring statement to the Nickersons, Clearwater County and the world at large that reasonably prudent people cannot and should not trust any attorney in the State of Idaho. This ruling would dictate that any prudent person, despite the credentials of an attorney or the reputation of his firm, is wrong to not always be wary of what their attorney is and is not doing; to scrutinize how their attorney interprets or manipulates any and all rules, laws or case laws; to question and challenge any and all rulings, decisions and actions of all counsels involved in the case, including the Judge and those working in the Court's office; and take other such mandatory

1 precautions in order to protect themselves from the evils and potential wiles of attorneys and the  
2 covertly corrupt court system in Idaho.

3 Wherefore, the Nickersons request this Court 1) genuinely consider the realities of the  
4 injustices suffered by the Nickersons in the presentations of their claims and defenses due to no  
5 fault of their own; 2) recognize and appropriately respond to the prevalent and persistent  
6 deceptions and fraud on the Court perpetrated by PHH, Chase and their accomplices that the  
7 Nickersons were unaware of, their attorney was unable to stop or prevent, and this Court's  
8 rulings has made the Nickersons powerless to stop since they became aware of them; 3) justly  
9 find the Nickersons claim of excusable neglect has merit; and 4) immediately grant relief from  
10 judgment.

11 **New Evidence, I.R.C.P. 60(b)(2)**

12 PHH claims the New Evidence is not timely and was already ruled upon. However, this is  
13 simply not true. Even though some of this New Evidence may have been presented to the Court  
14 prior to its final judgment, since the Court has stated it did not and would not consider this  
15 evidence because it was presented after the Summary Judgment hearing, the evidence has never  
16 been adjudicated, nor has it ever been refuted by PHH. Requesting the Court consider this  
17 evidence in a 60(b) motion is appropriate and appears to be the only legal remedy at the District  
18 Court level left for the Nickersons to pursue in order to protect their legal rights. PHH's failure to  
19 refute this evidence is fatal and completely destroys their case for foreclosure and supports the  
20 Nickersons claims of fraud.

21 Crimes have been committed. Civil terrorism has occurred. The principals of PHH, Just  
22 Law, Chase and their enabling accomplices rightfully need to go to jail and need to repay the  
23 Nickersons for the damages and losses they have suffered. The evidence indicates the monetary,  
24 physical and emotional losses suffered by the Nickersons are perhaps the largest Clearwater  
25 County has ever adjudicated. However, PHH is once again attempting to use legal chicanery to  
26 mislead the Court, conceal their actions, and thwart justice being served.

27 The irrefutable fact is PHH has not met any of the thresholds needed to secure a judgment  
28 in their favor. Making frivolous and unsupported statements do not prove standing, ownership of  
29 a Note on the Nickerson property, possession of the Note at the time this action was filed, the  
30 legal right to collect a debt from the Nickersons, admissible and authentic proof of default on the  
31 Note, and sustained injuries suffered as a result of the Nickersons alleged actions or failures.  
32 This Court can no longer turn a blind eye, choose not to hear or consider the evidence, cling to

1 its apparent prejudices against the Nickersons, and succumb to the intimidation or coercion of  
2 PHH and their accomplices. This Court must consider the evidence. It is a matter of law. It is a  
3 matter of fact.

4 **Fraud, I.R.C.P. 60(b)(3)**

5 PHH is once again misusing, misquoting and misconstruing the case law it cites. The case  
6 cited is referring to fraud on the court which PHH is so aptly doing by deceptively quoting this  
7 case and attempting to apply it to fraud in general. PHH claims "fraud will be found 'only in the  
8 presence of such tampering with the administration of justice as to suggest a wrong against the  
9 institutions set up to protect and safeguard the public.' *Calledge v. Transport Tire Co., Inc.*, 107  
10 Idaho 602, 691 P.2d 1217 (1984)." What this case actually stated is:

11 "Transport Tire's motion to set aside the default was made within the one year time  
12 limitation for relief based upon allegations of "fraud upon the court." However, Transport  
13 Tire has failed to establish any such fraud. *See Compton v. Compton*, 101 Idaho 328, 334,  
14 612 P.2d 1175, 1181 (1980); *Willis v. Willis*, 93 Idaho 261, 460 P.2d 396 (1969). As  
15 stated in *Compton, supra*, quoting *Hazel--Atlas Glass Co. v. Hartford Empire Co.*, 322  
16 U.S. 238, 64 S.Ct. 997, 88 L.Ed. 1250 (1944), *rev'd on other grounds, Standard Oil Co.*  
17 *of California v. United States*, 429 U.S. 17, 97 S.Ct. 31, 50 L.Ed.2d 21 (1976),  
18 "Apparently such fraud will only be found in the presence of such tampering with the  
19 administration of justice as to suggest 'a wrong against the institutions set up to protect  
20 and safeguard the public...'" *Calledge v. Transport Tire Co., Inc., Id.*

21 This legal authority is clearly referring to fraud on the court not fraud in general; however,  
22 PHH's misuse of this legal authority most appropriately indicates fraud should be found in this  
23 case because lying to the court in order to take the Nickerson ranch is clearly tampering with the  
24 administration of justice and is a wrong committed against an institution set up to protect and  
25 safeguard the public.

26 Further, the Nickersons have not merely re-recited claims already ruled upon. This Court  
27 never considered the Nickersons allegations of fraud and therefore, none of the issues of fraud  
28 presented by the Nickersons, including those on pages 13-14 of their Motion for Relief from  
29 Judgment, have been ruled upon. This Court merely found fraud was not pled and did not  
30 provide the Nickersons with the opportunity to amend their pleadings or present fraud as  
31 required by case law. In *McKee Bros., Ltd. v. Mesa Equipment, Inc.*, 102 Idaho 202, 628 P.2d  
32 1036 (1981), the Idaho Supreme Court found:

31 In response to plaintiff's motion for summary judgment, the defendant filed an affidavit  
32 alleging fraud on the part of the plaintiff. The court below concluded that the defendant  
might be able to establish the necessary elements of fraud and therefore ordered that "if

1 Defendant files an amended answer properly setting up such defense within ten days, and  
2 leave is hereby granted therefor, then the motion for summary judgment must  
3 accordingly be denied."

4 ...  
5 Bistline, Justice, specially concurring.

6 While I agree in affirming, I believe it of sufficient importance to state my view that the  
7 submission of an affidavit in response to a motion for summary judgment may, and  
8 ordinarily does, suffice to introduce an issue without a formal amendment to the  
9 complaint, answer, or cross-complaint — as the case may be.

10 ...  
11 The court in *Griffeth v. Utah Power & Light Co.*, 226 F.2d 661 (9th Cir.1955), aptly  
12 stated that "[u]nder pre-trial or summary judgment procedure, the affidavits serve the  
13 same purpose as the allegations of the pleading. Here the affidavit ... was an extension of  
14 the answer." Id. at 670.

15 ...  
16 The court in *Parsons v. Doctors for Emergency Services*, 81 F.R.D. 660 (D.Del. 1979),  
17 similarly noted that issues of law raised in pretrial orders constitute exceptions to the  
18 general rule that affirmative defenses not pleaded are waived. "Since the pretrial order  
19 preserved the defendant's factual and legal contention of contributory negligence, the  
20 issue was not waived by the defendant's failure to conform to Rule 8(c)." Id. at 662.

21 ...  
22 Further, after the judgment was entered, relief should have been sought under I.R.C.P.  
23 60(b); it should not have been sought in the first instance in this Court.[1] While all the  
24 parties knew that fraud was an issue, the court was within its rights in asking for an  
25 amended pleading to specifically set forth the allegations of fraud. Nor can the court be  
26 faulted for subsequently entering judgment for plaintiff when defendant failed to  
27 comply."

28 What was fatal to the defendant in the above case was that they did not comply with the court's  
29 order to amend their pleading, not that they didn't plead fraud. To ensure equal access to justice  
30 for the Nickersons, and justice being served on PHH and their accomplices, this Court should  
31 have acted as the Court in the above case and instructed the Nickersons to amend their pleadings,  
32 not simply ignore their claims and evidence of fraud.

33 Additionally, PHH is once again attempting to mislead the Court by stating, "The  
34 Nickersons' allegations of 'fraud' are merely statements of the defendants." This is simply false.  
35 For example, PHH claims to be in possession of the Nickerson Note. However, the Nickersons  
36 have provided evidence, a letter from Chase received in response to a Qualified Written Request,  
37 stating Chase is in possession of the Nickerson Note and that Chase is the investor on the  
38 Nickerson loan. This letter clearly refutes any claims of ownership or possession of PHH and  
39 refutes the assignment of the note and mortgage PHH is using to claim ownership. Further, PHH  
40 has provided two differing versions of the Nickerson Note. Two differing original versions of the

1 Note cannot exist. These "statements of the defendants" are backed up with hard evidence that  
2 has not been nor can be refuted by PHH or Chase. The Nickersons have scoured the record and  
3 all of the Nickersons claims of fraud are irrefutably supported by the evidence presented to this  
4 court by all parties and are not "merely statements of the defendants." The Nickersons challenge  
5 this Court and PHH to find any claim of fraud by the Nickersons that is "merely a statement" not  
6 supported by the evidence before this court. The Nickersons also challenge the Court to look at  
7 everything PHH has provided to the Court and see the inconsistencies, deception, conflicting  
8 statements and fraud that penetrates virtually every filing and hearing presented to the Court by  
9 PHH.

10 Purposefully lying to the Court and the Nickersons in order to prevail in this conspired  
11 mega-theft scheme constitutes fraud, tampers with the administration of justice, and prevents the  
12 Clearwater County District Court, an institution set up to protect and safeguard the public, which  
13 despite any existing or non-existing prejudices this Court may or may not have does include the  
14 Nickersons, from performing its lawful duties. PHH and their accomplices have committed fraud  
15 and this Court must not continue to ignore it. Fraud is irrefutably presented in the Nickersons'  
16 60(b) motions. This Court must accept its responsibility to honestly consider the evidence and  
17 grant the Nickersons relief from judgment.

### 18 Misconduct

19 Again, PHH is attempting to paint the wrong picture. The Nickersons provided a Notice  
20 of Hearing on their Motion to Strike Depositions on April 22, 2014, but this Court vacated the  
21 hearing. This court did not hear or consider the Nickersons Motion to Strike Depositions, but  
22 simply dismissed it based on timing, and thus, this issue has never been adjudicated. Further, as a  
23 part of their 60(b) motion, the Nickersons have provided additional evidence of the misconduct  
24 surrounding the depositions which must not be ignored by this Court.

25 In addition, the Nickersons have presented testimony and evidence demonstrating the  
26 Misconduct of both opposing Counsels. The proceedings of this case has been plagued with the  
27 misconduct of Jason Rammell (ISB 5372), Kipp Manwaring (ISB 3817), and Jon Stenquist (ISB  
28 6724). Lying to and deceiving the Court and the Defendants by making false statements of fact  
29 and law in order to mislead the Court into ruling in their favor is in violation of 1) Idaho's Rules  
30 of Professional Conduct (Rule 8.4 Misconduct), 2) Idaho Attorney's Oath, and 3) I.C. § 3-  
31 201(4). Duties of Attorneys. This misconduct must not be ignored any longer. This Court must  
32 grant relief from judgment and set aside judgment.

**Fraud on the Court, I.R.C.P. 60(b)(iii)**

It is very interesting to note that PHH does not address this issue. PHH did not provide any evidence or affidavit in opposition to the Nickersons presentation of fraud on the court. Therefore, PHH admits this issue has merit and the court must grant relief from judgment and set aside judgment.

Fraud has been committed by PHH, Chase, and their accomplices. PHH knows it. Chase knows it. Jason Rammel knows it. Kipp Manwarring knows it. Charles Just and those working on his behalf know it. John Stenquist knows it. Benjamin Ritchie and the other Managing Partners of Moffat Thomas know it. John Mitchell knew it, knows it, believes it, and has stated it to this Court and other agencies. The Nickerson Family has lived the fallout from it and irrefutably proven it. It is time for this Court to uphold the law and act on it.

**Reply to Plaintiff's Objection to the Nickersons' Motion to Set Aside Judgment (Edited Motion to Set Aside Judgment):**

As addressed above, the Plaintiff's claim of *res judicata* does not apply to this ongoing litigation and must not be considered.

PHH claims the evidence of robo-signing presented is not timely and not relevant. However, according to I.R.C.P. 60(b)(iii) the Court has the authority to set aside judgment at any time for fraud on the court. The Nickersons have presented evidence demonstrating the assignment presented by the Plaintiff is fraudulent for a number of reasons including but not limited to robo-signing. The letter and affidavit of John O'Brien provides evidence and authority that Kirsten Bailey is a robo-signer. The timing of when Mr. O'Brien instituted his policy is irrelevant, but fully supports the Nickersons claims that the assignment is invalid. Mr. O'Brien instituted his policy based on an audit performed on the records previously recorded in his registry in 2010. The audit indicated any records in his registry that contained Kirsten Bailey's signature were invalid because it was determined she was a robo-signer. This Court cannot ignore that legal authority has determined documents signed by Kirsten Bailey are void and unenforceable. PHH must not be allowed to simply claim irrelevancy based on timing. This is a ludicrous defense and the insinuation that this Court is so mentally incompetent and unable to think full circle enough to see through this unethical legal strategy, should offend the Court greatly. Obviously, prior to the date a formal statewide determination to reject documents containing her signature would be instituted, Kirsten Bailey had to commit criminal and unlawful executions of documents sufficient to convince a Secretary of State's office to take such an

1 official stand. In the Pro Se litigants world, this would aptly be labeled a Duh moment. Further,  
2 in addition to providing legal authority to this Court, the Nickersons assert PHH and opposing  
3 counsel knows and is intentionally withholding evidence from the Court that Kirsten Bailey has  
4 been publicly labeled a Certified Robosigner by other agencies, authorities and in other actions.  
5 PHH, Just Law, opposing counsel and those working in official capacities on their behalf in this  
6 litigation know the assignment is invalid and are intentionally committing fraud on the Court by  
7 presenting it and keeping silent regarding the fraudulence of it.

8 Since the Court is relying on this assignment for judgment, PHH must be required to  
9 prove Kirsten Bailey is not a robo-signer. PHH must be required to prove the assignment is not  
10 fraudulent and that it actually occurred. PHH has fatally failed to present any evidence or  
11 affidavit attesting to the fact Kirsten Bailey's signature is not robo-signed. PHH has fatally failed  
12 to present any evidence or affidavit indicating anything about the assignment is authentic and  
13 whether or not it really did occur. PHH has fatally failed to explain how Chase claims to still be  
14 the owner and possessor of the Note if they assigned all interests to PHH. As a matter of fact and  
15 law, PHH has admitted the assignment is a fraud. No assignment. No debt. No default. No case.  
16 On a side note, true justice demands lots of jail time.

17 The Nickersons have provided evidence and authority regarding Kirsten Bailey's robo-  
18 signing and the Nickersons have provided evidence that the assignment never occurred because  
19 Chase still claims to be in possession of the Nickerson Note and claims to be the investor on the  
20 Nickerson loan. Therefore, PHH's claims of ownership of the Nickerson loan constitute fraud on  
21 the court and require this Court grant relief from judgment and to set aside judgment.

22 **Reply to Plaintiff's Objection to the Nickersons' Motion to Set Aside Judgment Based on**  
23 **Supplemental Evidence of Fraud on the Court:**

24 Submitting an affidavit that is not properly notarized goes far beyond the fraud standard  
25 set forth by PHH. PHH's fraud on the court standard states, "Apparently such fraud will only be  
26 found in the presence of such tampering with the administration of justice as to suggest 'a wrong  
27 against the institutions set up to protect and safeguard the public...'" *Catledge v. Transport Tire*  
28 *Co., Inc., Id.* Not only did the Court allow PHH to correct fatal accounting flaws which proved  
29 the Affidavit inaccurate; supported the Nickerson claims, assertions and allegations of reckless  
30 record keeping, fraudulent accounting practices and no default; and overlook fatal mistakes  
31 which should have immediately ended these proceedings; but the Court ignored the fact the  
32 Affidavit claimed personal knowledge required by I.R.C.P. 56(e) that did not and could not exist.



1 The misrepresentation of this Affidavit was fatal to PHH's case and should have resulted in a  
2 favorable judgment for the Nickersons. Instead, the Second Affidavit of Ron Casperite is what  
3 the Court used to determine the case. Among other reasons, this affidavit is not and was not a  
4 true affidavit because of the invalid notarization. The submission of an invalid affidavit is clearly  
5 tampering with the administration of justice and a wrong committed against the Court and the  
6 Nickersons. Further, this Court did not consider the Nickersons previous assertions regarding the  
7 invalidity of this affidavit but disregarded them based on alleged timing. However, contrary to  
8 the presumed wishes of PHH and their accomplices, I.R.C.P. 60(b)(iii) is not concerned with  
9 timing when fraud on the court has been committed.

10 The Nickersons have provided authority from both New Jersey and Idaho proving the  
11 notarization of the Second Affidavit of Ron Casperite is invalid. The Nickersons have provided  
12 evidence and witness testimony to refute the accuracy, validity, and authenticity of the  
13 information contained in the Affidavit. It is not lawful, ethical or moral for this Court to  
14 prejudicially ignore the evidence or disregard the laws of the States of New Jersey and Idaho.  
15 This Court can rightfully and must find the Second Affidavit of Ron Casperite is invalid and  
16 must grant relief from judgment and immediately set aside judgment.

### 17 CONCLUSION

18 One must look at the big picture of facts of this case to realize just how scandalous the  
19 actions of PHH, Chase, Just Law, Moffat Thomas and their accomplices have been, and how  
20 unjust the rulings of this Court have been. **The following facts cannot be lawfully disputed or**  
21 **morally ignored.** If this Court disagrees, the Nickerson Family challenges the Court to  
22 acknowledge its inability to see its own mistakes and let a jury decide. The Nickersons had a  
23 lifetime history of strong, solid, perfect credit. In January 2010, the Nickersons account was  
24 current and in good standing. Chase had taken over the Note a few years earlier and plagued the  
25 Nickersons with inaccurate record keeping, false credit reporting, threatening phone calls,  
26 apologetic phone calls reversing previous calls, failure to provide documentation of transactions,  
27 communications, reversals, etc. – potentially one of the greatest banking nightmares of all time.  
28 Due to their diligence and persistence, the Nickersons were able to sift through the hordes of  
29 unskilled customer service prototypes to find competent employees who found the Nickersons  
30 payments hidden in escrow accounts, wrong accounts, suspense accounts, or “strangely just  
31 sitting there” as some would say. Over and over errors were fixed and corrected. Over and over  
32 the Nickersons were promised documentation. Over and over the Nickersons went into local

1 bank branches across the country and spoke with account representatives, branch managers, and  
2 tellers confirming everything was settled and okay. Over and over local branch representatives  
3 tried to print documentation from the Nickersons account for their records, but were unable to.  
4 "Strange" is what they would say. "Something is definitely wrong." Over and over the  
5 Nickersons were referred to up-lines who put in requests and promised the documentation would  
6 be mailed to the Nickersons. Finally, a competent employee agreed to help get the situation  
7 resolved. Kim worked with research, straightened out all accounting errors, and proved the  
8 Nickersons were on time and had been on time. The Nickersons believed the long saga was  
9 finished. Then in response to the Nickersons not receiving documentation Kim repeatedly  
10 requested be sent and her research into why, an alarming conversation took place in which she  
11 expressed fear, concern and a knowledge of illegal activity with a number of Chase accounts she  
12 was working with, one of which was specifically the Nickersons. Kim disappeared. PHH then  
13 claimed they had purchased the Note in February 2010, and immediately began foreclosure  
14 proceedings. (Fraud Alert: The fabricated and fraudulent assignment being relied upon did not  
15 take place until June 2010 when Just Law realized the Nickersons were not going to just give up  
16 and let their ranch be stolen as had been their experience with previous victims.) PHH claimed  
17 Chase retained all account records. Chase claimed PHH was the new owner and had all the  
18 Nickersons records. As time has proven, both lied, on multiple counts.

19 Just Law, claiming to act on behalf of PHH, filed a Non-Judicial foreclosure and  
20 unlawfully locked down all the Nickersons financial resources. This prevented the Nickersons  
21 from just paying off the loan and securing their property and investments in it. John Mitchell  
22 responded to the Non-Judicial action. The unlawful action was stopped. Just Law then filed a  
23 Judicial Foreclosure by publication without contacting the Nickersons or their attorney.

24 Fraud Alert: PHH appointed Just Law as their Trustee prior to gaining any alleged  
25 beneficial interest in the property with the fraudulently fabricated assignment that has been  
26 presented. The fact is PHH has no beneficial interest in the Nickerson property. Therefore, Just  
27 Law has and has had no legitimate or lawful authority to pursue any actions regarding the  
28 Nickerson property.

29 Misconduct Alert: Jason Rammel committed fraud on the Court when he filed by  
30 publication. Jason Rammel, Kipp Manwarring and Just Law have committed fraud on the Court  
31 by submitting fraudulent documents, evidence and testimony. Jason Rammel, Kipp Manwarring  
32 and Just Law have misrepresented to the Court PHH has the right to foreclose on the Nickerson

1 property. Jon Stenquist and Moffat Thomas committed fraud on the Court by failing to inform  
2 the Court of the fraud PHH and Chase have perpetrated on the Court and against the Nickersons.

3 This Court took jurisdiction of the case, refused to consider all evidence presented by the  
4 Nickersons, and has therefore rendered judgments in favor of PHH and Chase that are not based  
5 on the merits, facts or any resemblance of the truths surrounding this case. The Nickersons  
6 attorney due to personal issues beyond his control and unknown to the Nickersons failed to  
7 exercise due diligence and misrepresented the status of the case and his actions involving it to the  
8 Nickersons. The Idaho Supreme Court has held, **"it is said that, where it appears that a  
9 judgment was taken against appellant through the negligence of an attorney who had been  
10 employed by such party, nothing is left to the discretion of the court, and the judgment  
11 must be set aside."** *Pierce v. Vialpando*, 78 Idaho 274, 301 P.2d 1099 (1956). See affidavit of  
12 John Mitchell (*Affidavit in Support of Motion for Relief from Judgment*, Exhibit 8). Clearly, John  
13 Mitchell was negligent in this case; and thus, as a matter of law, this court has no option but to  
14 set aside judgment.

15 However, even though, this issue alone requires this Court set aside judgment, there are  
16 numerous other reasons requiring judgment to be set aside. A few are reiterated below.

17 **No default.** The Nickersons paid their January 2010 payment. PHH, Just Law and Chase  
18 refused their February 2010 and all future payments. Contrary to this Court's stated opinion  
19 regarding default, this does not create a default by the Nickersons. The Nickersons did not  
20 default. The Nickersons were prevented from performance. Prevention of performance creates a  
21 default by PHH. The law does not allow a creditor to refuse payment from a debtor and then  
22 claim default.

23 ***impotentia excusat legem*** - impossibility of performance of a legal obligation is a good  
24 excuse

25 ***nemo tenetur ad impossibile*** - no one is required to do what is impossible

26 ***reprobata pecunia leberat solventem*** - money refused releases the debtor

27 Further, PHH and Chase fabricated, emphasis *fabricated*, an account history to prove  
28 default based on records they understood and were told the Nickersons had in their possession.  
29 The Nickersons proved it false with evidence PHH and Chase did not yet know they had. The  
30 Court allowed PHH to correct the account history, more than once. However, even with the  
31 Court ignoring PHH's fatal accounting errors that should have dismissed their action, PHH  
32 submitted an inaccurate account history that was based on personal knowledge that Ron

1 Casperite did not and could not possibly have, and that was not lawfully or validly notarized.  
2 Thus, on multiple counts, the Second Affidavit of Ron Casperite is void and cannot be relied  
3 upon. Therefore, as a matter of fact and law, there is no default and PHH has not proven any  
4 default. PHH has submitted no admissible or lawful evidence to demonstrate default.

5 Additionally, the account history provided by Chase and sworn to by a Chase employee  
6 irrefutably indicates the Nickersons are due a refund. So the account history provided fully  
7 validates and supports the Nickersons claim there is no default. Further, the Nickersons were  
8 never properly, lawfully or contractually served Notice of Acceleration by PHH or Chase. All  
9 parties know it, but PHH and Chase could not rectify their error without alerting the Court of the  
10 fraud they were perpetrating regarding ownership and possession.

11 **No ownership. No possession.** PHH is not the owner or possessor of the Nickerson Note.  
12 As a matter of law, fact, and record, PHH has no beneficial interest in the Nickerson Note. The  
13 Nickersons have offered testimony and legal authority to prove the Assignment presented to  
14 claim ownership is invalid. Chase still claims to own the Note, and this Court cannot, as a matter  
15 of law and fact, expose the Nickersons to double indemnity, and cannot, as a matter of law and  
16 fact, allow an entity that does not have any interest whatsoever in the Nickerson property to  
17 foreclose on it. Such a ruling cannot be lawfully enforced.

18 **No injuries.** PHH and/or Chase, by their actions and inactions, defaulted on any alleged  
19 agreement with the Nickersons by breaching the contract and refusing to accept payments.  
20 Therefore, the Nickersons had and have no further obligation to the Note, and PHH cannot  
21 lawfully suffer any or claim any injuries.

22 *actio non datur non damnificato* – an action is not given to one who is not injured

23 **Fraud.** PHH, Chase and Just Law committed fraud on the Court by filing fraudulent  
24 documents, offering fraudulent testimony and fabricating fraudulent evidence.

25 *fraus omnia vitiat* – fraud vitiates everything

26 *fraus est celare fraudem* - it is a fraud to conceal a fraud

27 *fraus et jus nunquam cohabitant* – fraud and justice never dwell together

28 *ex dolo malo non oritur action* - no right of action can have its origin in fraud

29 *ex dolo malo actio non oritur* - a right of action cannot arise out of fraud

30 *frustra legis auxilium quaerit qui in legem comittit* – he who offends against the law  
31 vainly seeks the help of the law  
32

1       The Nickersons presented an Amended Answer And Counterclaim to this Court which  
2 this Court refused to look at because this Court claims Final Judgments are exempt from the  
3 three day mailing deadline extension codified in I.R.C.P. 6(e)(1). The Nickersons' Counterclaim  
4 fully supported assertions of fraud, misconduct, unlawful actions, documented proof of the  
5 Nickersons claims, assertions and defenses. Yet this Court refused to consider it and awarded a  
6 foreclosure judgment to an entity that does not have any beneficial interest in the Nickerson  
7 property, who did not and does not have possession of the Note, who has not refuted the  
8 Nickersons claims the Nickersons did not default, who have committed fraud on the Court, and  
9 who have persistently engaged in misconduct prior to and throughout these proceedings. This  
10 fraud has wreaked havoc on the Nickersons physical, emotional and financial resources. It has  
11 been a long, grueling battle that has left permanent scars and created long-term losses. It is  
12 imperative this Court see and understand the Nickersons were not at fault or in default for any of  
13 it. They are undeserving victims of a corrupt system that has miserably failed to protect them as  
14 it had promised and was obligated to do.

15       In closing, the Nickersons would like to once again reiterate PHH's claims of *res judicata*  
16 are misplaced and do not apply to this ongoing litigation. The doctrine of *res judicata* applies to  
17 future litigation of the same causes of action regarding the same parties. The Nickersons 60(b)  
18 motions are not future litigation. Also, as the Idaho Supreme Court has attested, the codified  
19 purpose of 60(b) motions is to allow the court to provide relief from judgment and set aside  
20 judgment because of mistake, surprise, excusable neglect, fraud, misrepresentation, misconduct  
21 and fraud on the court that colored, prejudiced or interfered with the administration of justice and  
22 the adjudication of the case based on the merits.

23       In addition, the Nickersons have not merely made statements or claims. The Nickersons  
24 have presented irrefutable and undeniable truths, facts, claims, assertions and material evidence  
25 that is fatal to PHH's claims. All issues presented in the Nickersons 60(b) motions have been  
26 fully supported by affidavit, authorities, case laws, evidence, rules and statutes. PHH nor Chase  
27 have presented any affidavits or evidence to refute any of the Nickersons claims nor have they  
28 lawfully answered the Nickersons claims. Therefore, the Nickersons once again request this  
29 Court grant relief from judgment, set aside the summary judgment orders, dismiss PHH's claims  
30 with prejudice, and allow the Nickersons to proceed with their counterclaim and third party  
31 claim. It is time for this Court to look at the evidence in its chambers, uphold the laws of the  
32 State of Idaho, forsake any prejudices or predetermined opinions, stop the abuse undeservedly

1 being suffered by the Nickersons, recognize the merits of this case and the mistakes made by this  
2 Court demand a reversal of its opinions and rulings, and do the right thing.

3 In accordance with I.R.C.P. 7(d) and I.C. § 9-1406, I certify (or declare) under penalty of  
4 perjury pursuant to the laws of the State of Idaho that the foregoing is true and correct.

5  
6 DATED this 12<sup>th</sup> day of November, 2014

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8 CHARLES NICKERSON  
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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 12<sup>th</sup> day of November, 2014, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

NOTE: Apparently Kipp Manwaring is no longer working for Just Law. However, we have not received notice from Kipp Manwaring, Just Law or the Court regarding his withdrawal nor has anyone provided information on who is now representing Just Law in this case. Therefore, we are just serving Just Law Office.

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Charles Nickerson

CLERK OF DISTRICT COURT  
CLEARWATER COUNTY

2014 NOV 14 AM 8:36

CASE NO. CV 2011-28BY cf DEPUTY

1 CHARLES NICKERSON AND DONNA NICKERSON  
2 3165 Neff Rd  
3 Orofino, ID 83544

4 Defendants Pro Se

5  
6 **IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE**  
7 **OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER**  
8

9 PHH MORTGAGE,

10 Plaintiff/Counter-Defendant,

11 vs.  
12

13 CHARLES NICKERSON and DONNA  
14 NICKERSON, husband and wife;  
15 KNOWLTON & MILES PLLC; WELLS  
16 FARGO BANK, N.A., AND JOHN DOES I  
17 thru X

18 Defendant,

19 COLDWELL BANKER MORTGAGE, a/d/b/a  
20 of PHH MORTGAGE, and JPMORGAN  
21 CHASE BANK, N.A.

22 Third Party-Defendants.

Case No.: CV 2011-28

**RESPONSE IN OPPOSITION TO  
PLAINTIFF'S MOTION TO STRIKE  
EXHIBITS**

23 COMES NOW, Defendants, Charles and Donna Nickerson, respond in opposition to the  
24 *Plaintiff's Motion to Strike Exhibits* and defend the exhibits incorporated therein against the  
25 objections of PHH as follows.

26 **Background.** The Nickersons have filed three separate 60(b) Motions: 1) *Motion For*  
27 *Relief From Judgment Or Order* filed October 6, 2014; 2) *Motion To Set Aside Judgment* filed  
28 October 20, 2014, in which the Court refused to accept the accompanying Affidavit and Exhibits  
29 by facsimile so the Nickersons filed an *Edited Motion To Set Aside Judgment* on October 22,  
30 2014, in order to submit it via facsimile; and 3) *Motion To Set Aside Judgment Based On*  
31 *Supplemental Evidence* filed October 21, 2014. The Court set a schedule for the Nickersons  
32 *Motion To Set Aside Judgment* with an Order dated October 21, 2014. The Court then entered an  
additional Order dated October 28, 2014, in response to the Nickersons *Edited Motion To Set*



1 *Aside Judgment*. On November 5, 2014, the Plaintiff filed a *Plaintiff's Response In Opposition to*  
2 *Nickersons Motions* and served the Nickersons by mail on the same date. In this Response, the  
3 Plaintiff chose to address all three 60(b) motions filed by the Nickersons. Therefore, the  
4 Nickersons filed a *Reply Brief In Support Of 60(b) Motions* on November 12, 2014, which  
5 addressed all issues raised by the Plaintiff in response to the Nickerson *Motion To Set Aside*  
6 *Judgment/Edited Motion to Set Aside Judgment* to protect the Nickersons interests involving  
7 these issues. The Plaintiff also simultaneously filed a *Plaintiff's Motion To Strike Exhibits* on  
8 November 5, 2014. In this *Plaintiff's Motion To Strike Exhibits*, the Plaintiff again chose to  
9 address all three 60(b) motions filed by the Nickersons. Therefore, the Nickersons are filing this  
10 *Response In Opposition To Strike Exhibits* in response to the Plaintiff's Motion.

11 This Court has ignored and remained silent regarding the Nickersons other two 60(b)  
12 motions and refused to allow a hearing to be scheduled or a schedule to be set. No instruction or  
13 explanation to the Nickersons has been provided. This is despite 1) multiple calls to the District  
14 Court Clerk's Office requesting hearings be set; 2) confirmation from the Supreme Court that it  
15 was the District Court's responsibility to hear 60(b) motions; 3) a *Motion to Set Schedule* filed  
16 November 3, 2014; and 4) a *Motion To Reconsider Order filed October 28, 2014, Prior To*  
17 *Rendering Judgment On The Nickersons 60(b) Edited Motion To Set Aside Judgment* filed  
18 November 10, 2014. Therefore, the Nickersons offer this background in an attempt to allay the  
19 confusion regarding the Nickersons 60(b) motions and to provide documentation for future  
20 reference as to the actual occurrences regarding the filing of their 60(b) motions.

21 ***Res Judicata* does not apply.** As detailed in the Nickersons' *Reply Brief in Support of*  
22 *60(b) Motions*, the Plaintiff's claims of *res judicata* are misplaced, without merit and barred by  
23 the Idaho Supreme Court. The doctrine of *res judicata* applies to future litigation of the same  
24 causes of action involving the exact same parties and does not apply to actions that are currently  
25 being litigated. Further, the Idaho Supreme Court affirmed in *Compton v. Compton*, 101 Idaho  
26 328, 612 P.2d 1175 (1980), that the lawful purpose of I.R.C.P. 60(b) motions is to provide an  
27 avenue for the court to grant relief from judgment and set aside judgment due to the fact the  
28 adjudication of the case was colored by mistake, surprise, excusable neglect, fraud,  
29 misrepresentation, misconduct or fraud on the court or any other reason justifying relief from the  
30 operation of judgment. In addition, for the record, the issues PHH is objecting to have never  
31 adjudicated based on the merits. The Court simply chose to ignore, disregard and not consider  
32

1 them. Therefore, for the reasons set forth above, PHH's claims of *res judicata* are baseless and  
2 without merit.

3 **Second Affidavit of Ronald Casperite is invalid.** The exhibit referenced in Paragraph  
4 18 of *Charles Nickerson's Affidavit in Support of Motion for Relief from Judgment* provides an  
5 authority stating the *Second Affidavit of Ron Casperite* was invalidly notarized.

6 "A signed notarization is the ultimate assurance upon which the whole world is entitled to  
7 rely that the proper person signed a document on the stated day and place. Local,  
8 interstate, and international transactions involving individuals, banks, and corporations  
9 proceed smoothly because all may rely upon the sanctity of the notary's seal... 'The  
10 proper functioning of the legal system depends on the honesty of notaries who are  
11 entrusted to verify the signing of legally significant documents.'... a false notarization is a  
12 crime and undermines the integrity of our institutions upon which all must rely upon the  
13 faithful fulfillment of the notary's oath." *Klem v. Washington Mut. Bank*, 295 P.3d 1179,  
14 176 Wash. 2d 771 (2013).

15 The authority in this exhibit is from New Jersey, the state in which the notarization occurred.

16 Since PHH was unwilling to admit to the fact the notarization on this affidavit was invalid, and  
17 the Court refused to consider the prior evidence concerning this issue, the Nickersons only  
18 recourse was to reach out to the Notary Departments of the states of Idaho and New Jersey.

19 Therefore, this letter, which is similar to the one provided by the State of Idaho Notary  
20 Department, was the Nickersons only option to demonstrate to this court that the New Jersey  
21 Notary Unit considers the notarization on the *Second Affidavit of Ron Casperite* to be invalid.

22 This letter is from an authority and clearly falls under the hearsay exception I.R.E. 803(24)

23 "Other exceptions. A statement not specifically covered by any of the foregoing exceptions but  
24 having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A)  
25 the statement is offered as evidence of a material fact; (B) the statement is more probative on the  
26 point for which it is offered than any other evidence which the proponent can procure through  
27 reasonable efforts; and (C) the general purposes of these rules and the interests of justice will  
28 best be served by admission of the statement into evidence." Therefore, as a matter of law, this  
29 letter must not be stricken.

30 The Nickersons have provided trustworthy testimony and authoritative proof the *Second*  
31 *Affidavit of Ronald Casperite* is inadmissible evidence and cannot be relied upon, was  
32 inaccurate, that Mr. Casperite did not and could not have personal knowledge, that authority has  
attested it is not notarized properly, and that it is therefore invalid. The *Second Affidavit of*  
*Ronald Casperite* is being relied upon to meet the threshold of standing regarding default and to

1 demonstrate the existence of a default that is vehemently denied by the Nickersons. The  
2 inaccuracy of the affidavit has been unquestionably demonstrated and proven by the Nickersons.  
3 Since this Court has granted final judgment by ignoring genuine issues of material fact, and  
4 without allowing the Nickersons to prove no default existed through further testimony at trial,  
5 this letter provides material fact regarding Mr. Casperite's affidavit and proves it is not valid and  
6 cannot be relied upon. This letter must not be stricken if justice is to be served. Mr. Casperite's  
7 affidavit is a critical component being relied upon by PHH in prosecuting their claim and justice  
8 requires the Nickersons be allowed to refute it. Thus, I.R.E. 803(24) supports the Nickersons  
9 right to introduce this letter into evidence. Wherefore, as a matter of law, and in the interest of  
10 justice being served, this letter must not be stricken.

11 Further, this exhibit is an exception to hearsay and is admissible: 1) It is regarding claims  
12 made by PHH and denied by the Nickersons; 2) It contains guarantees of trustworthiness –  
13 provided by state officials; 3) It is evidence regarding a material fact – whether or not the  
14 Nickersons defaulted on their loan and whether or not PHH has the right to foreclose; 4) It is  
15 more probative on the point than any other evidence the Nickersons can reasonably procure; and  
16 5) It is in the best interest of justice to permit it into evidence. See hearsay exceptions - I.R.E.  
17 803(15) and 803(24). Therefore, this exhibit must be considered and not stricken.

18 **The Assignment from Chase to PHH constitutes fraud and fraud on the Court.** The  
19 exhibit referenced in Paragraph 7 of *Charles Nickerson's Affidavit in Support of Edited Motion*  
20 *to Set Aside Judgment* provides a legal authority from a department of the Secretary of the  
21 Commonwealth of Massachusetts regarding the Nickersons' claim the assignment from Chase to  
22 PHH was robo-signed by Kirsten Bailey. PHH cannot simply claim, due to timing, the exhibit is  
23 not relevant to the current action. Mr. O'Brien's policy was instituted in 2011 after he performed  
24 an audit on the records that were previously recorded in his registry in 2010 which revealed the  
25 fact that Kirsten Bailey was a robo-signer. This Court cannot simply ignore this authority and  
26 PHH cannot be allowed to hide their criminal actions involving this assignment behind the cloak  
27 of this Court. Further, the Nickersons contend PHH and opposing counsels have knowledge and  
28 are willfully and intentionally withholding evidence from the Court that Kirsten Bailey has been  
29 publicly labeled a Certified Robosigner by other agencies, authorities and in other actions, and  
30 that their failure to admit material facts known to them coupled with their refusal to lawfully  
31 answer discovery that would incriminate them bars their claims. PHH, Just Law, Chase,  
32 opposing counsels and those working in official capacities on their behalf in this litigation clearly

1 have knowledge the assignment is invalid, was fabricated in order to steal the Nickerson ranch,  
2 and are intentionally committing fraud on the Court by presenting it and keeping silent regarding  
3 the fraudulence of it. PHH has unlawfully used this feloniously fabricated assignment as the  
4 basis for their claims of ownership in a wrongful, fraudulent foreclosure action against the  
5 Nickersons. By definition and law, this is fraud. *Ex dolo malo actio non oritur* - a right of  
6 action cannot arise out of fraud. Under the Laws of Commerce, Truth is sovereign. PHH has  
7 misled and willfully committed fraud on the Court. PHH's actions and deceptions refute and bar  
8 any claims of ownership or injuries. The Nickersons have provided proof this assignment is  
9 fraudulent, that it never occurred, that it could not have occurred as presented, that another entity  
10 who claims to own the Note and to be in possession of the Note has denied its authenticity, and  
11 have provided an authority attesting to the fact Kirsten Bailey is a robo-signer. Further, this  
12 exhibit is an exception to hearsay and is admissible: 1) It is regarding statements in a document  
13 affecting interest in property; 2) It contains guarantees of trustworthiness – provided by a state  
14 official; 3) It is evidence regarding a material fact – ownership of the Nickerson Note and  
15 Mortgage; 4) It is proof of fraud and *fraud vitiates everything*; 5) It is more probative on the  
16 point than any other evidence the Nickersons can reasonably procure; and 6) It is in the best  
17 interest of justice to permit it into evidence. See hearsay exceptions - I.R.E. 803(15) and 803(24).  
18 Therefore, this exhibit must be considered and not stricken.

19 **Closing.** Since this Court has considered and relied upon the *Second Affidavit of Ronald*  
20 *Casperite* and the fraudulent assignment above for summary judgment and final judgment having  
21 denied a jury or trial for corroboration of decision or accountability, this Court has accepted the  
22 responsibility and obligation to make sure its rulings are based upon truth, genuine issues of  
23 material fact and are not prejudicial. The evidence presented refutes the validity, authenticity and  
24 admissibility of these documents, demands a reversal of judgment, and cannot and must not be  
25 ignored. Therefore, balance of discretion and mandate to ensure equal access to justice for both  
26 parties require this Court to allow Paragraph 18 and Paragraph 7 above to stand.

27 Once again, the Nickersons assert the rulings in these proceedings have been prejudiced  
28 by legal chicanery and this Court refusing to consider the eyewitness testimony, smoking gun,  
29 video surveillance footage, prior written and taped confessions, and evidence chamber full of  
30 other corroborating evidence provided in the form of irrefutable claims and defenses by the  
31 Nickersons. Legal proceedings are not intended to be tried like a poker game in which one player  
32 has a stacked deck. Nor are they intended to be played like a sports game in which the referee

1 only makes calls in favor of his favorite team. Nor are they intended to be determined based on  
2 the luck of the draw or due to negligent representation. Legal proceedings are to be determined  
3 by the truthful presentation of the genuine material facts surrounding the case and the Judge is to  
4 be a just and impartial arbiter that ensures equal access to justice and protection of legal rights  
5 for all parties. As a matter of law, fact, and reason, just and lawful judgments and those who pen  
6 them should not be intimidated or threatened by authoritative evidence and testimony being  
7 presented. In fact, their first and foremost objective should be to seek out the truth and secure  
8 justice for all parties. Parties and counsels should not distress over evidence and testimony being  
9 presented if the merits of their cases are based on truth and fact, and their action is being heard  
10 by a just Judge. Legal chicanery should not be the best strategy to prevail. No justice is served on  
11 either party when one stoops so low as to violate the fundamental codes that rule the land of fair  
12 play. Therefore, the Nickersons request this Court allow their evidence to stand. The truth will  
13 set us free.

14 As a matter of fact, law and reason, PHH's arguments in their motion to strike are  
15 without merit, and therefore, this Court must deny PHH's motion to strike in its entirety.

16  
17 DATED this 14<sup>th</sup> day of November, 2014

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19 CHARLES NICKERSON  
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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 14<sup>th</sup> day of November, 2014, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

NOTE: Apparently Kipp Manwaring is no longer working for Just Law. However, we have not received notice from Kipp Manwaring, Just Law or the Court regarding his withdrawal nor has anyone provided information on who is now representing Just Law in this case. Therefore, we are just serving Just Law Office.

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Charles Nickerson

CLERK OF DISTRICT COURT  
CLEARWATER COUNTY

2014 NOV 18 AM 9:06

CASE NO. CV 2011-28

BY SD DEPUTY

CHARLES NICKERSON AND DONNA NICKERSON  
3165 Neff Rd  
Orofino, ID 83544

Defendants Pro Se

**IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE  
OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER**

PHH MORTGAGE,

Plaintiff/Counter-Defendant,

vs.

CHARLES NICKERSON and DONNA  
NICKERSON, husband and wife;  
KNOWLTON & MILES PLLC; WELLS  
FARGO BANK, N.A., AND JOHN DOES I  
thru X

Defendant,

COLDWELL BANKER MORTGAGE, a/d/b/a  
of PHH MORTGAGE, and JPMORGAN  
CHASE BANK, N.A.

Third Party-Defendants.

Case No.: CV 2011-28

**MOTION FOR CLARIFICATION  
REGARDING BRIEFING AND ORAL  
ARGUMENT ON NICKERSONS' 60(b)  
MOTION FOR RELIEF FROM  
JUDGMENT OR ORDER AND 60(b)  
MOTION TO SET ASIDE JUDGMENT  
BASED ON SUPPLEMENTAL EVIDENCE**

COMES NOW, Defendants, Charles and Donna Nickerson, request the Court provide clarification regarding its *Order Denying Motion to Reconsider* filed on November 12, 2014. In this order, the Court states, "Charles and Donna Nickerson filed a Motion to Reconsider the court's order for briefing regarding the Nickerson's several motions pursuant to IRCP 60(b). The Nickerson's motion to reconsider is denied."

This Court never entered an "order for briefing regarding the Nickerson's several motions pursuant to IRCP 60(b)." On October 21, 2014, the Court entered an order regarding the Nickersons' *Motion to Set Aside Judgment* stating, "Plaintiff shall file any opposing affidavits and briefs by November 5, 2014...Both parties are hereby notified that, pursuant to IRCP 7(b)(3)(D), oral argument is denied." Then, in response to the Nickersons *Edited Motion to Set Aside Judgment* (See Letter to Clerk filed with the Edited Motion), the Court entered a changed

1 order on October 28, 2014, which states, "The court will decide the **Edited Motion to Set Aside**  
2 **Judgment** on affidavits and briefing without oral argument. All parties may submit affidavits  
3 and briefing by November 5, 2014." (emphasis added) There is no explanation as to why the  
4 Court changed the deadline to include all parties, would make a ruling that required simultaneous  
5 deadlines for both parties, nor an explanation of how the Nickersons were to provide a reply  
6 brief, in accordance with I.R.C.P. 7(b)(3)(E), on the same date the Plaintiff's response was  
7 required. Further, there is no mention of the Nickersons' *Motion for Relief From Judgment or*  
8 *Order* filed on October 6, 2014, or *Motion to Set Aside Judgment Based on Supplemental*  
9 *Evidence of Fraud on the Court* filed on October 21, 2014, in the Court's orders filed on October  
10 21, 2014, or October 28, 2014. Despite the fact the Nickersons filed a *Motion to Set Schedule* on  
11 November 3, 2014, requesting the Court set a hearing or briefing schedule for these two 60(b)  
12 motions, no order regarding these two motions has ever been entered by the Court. However,  
13 now, after ignoring the Nickersons' *Motion to Set Schedule*, it appears from this order the Court  
14 is attempting to lump all of the Nickersons' 60(b) motions together and deny briefing. This is  
15 unethical, prejudicial and violates the Idaho Rules of Civil Procedure. The Nickersons have  
16 requested oral argument for their motions in accordance with I.R.C.P. 7(b)(3)(C). The  
17 Nickersons have requested hearing dates on multiple occasions and this Court has blatantly  
18 ignored them and instructed the clerks not to set them. The hearing date triggers the briefing  
19 schedule, including the right to submit a reply brief, as outlined in I.R.C.P. 7(b)(3)(E). To  
20 prevent prejudice, this Court must either set a hearing date or provide a briefing schedule for  
21 these two 60(b) motions. In addition, since the Plaintiff provided briefing on all three motions in  
22 the form of a response (See *Plaintiff's Response in Opposition to the Nickersons' Motions*), the  
23 Nickersons have replied (See *Nickersons' Reply Brief in Support of 60(b) Motions*) to the issues  
24 presented in the Plaintiff's response per I.R.C.P. 7(b)(3)(E) even though no hearing or schedule  
25 was set. In the interests of justice, this Court must consider the Nickersons' reply brief regarding  
26 the 60(b) motions and must consider the Nickersons' timely *Response to the Plaintiff's Motion to*  
27 *Strike Exhibits*.

28 In the interests of justice and affirmed by the Idaho Supreme Court, this Court cannot  
29 ignore the evidence and testimony presented in the Nickersons' 60(b) *Motion for Relief from*  
30 *Judgment or Order* and 60(b) *Motion to Set Aside Judgment Based on Supplemental Evidence*.  
31 As the Idaho Supreme Court ruled in *Compton v. Compton*, the doctrine of *res judicata* does not  
32 apply to 60(b) motions. "Finally, provision for the modification of all final judgments is made in



1 I.R.C.P. 60(b). The rule provides for two means of attacking a decree: first, by motion, for the  
2 reasons set out in 60(b)(1) through (6)." *Compton v. Compton*, 101 Idaho 328, 612 P.2d 1175  
3 (1980). Further, the evidence and testimony presented in the Nickersons 60(b) motions  
4 demonstrates, among other issues, the following:

- 5 • PHH does not own nor are they in possession of the Nickersons' Note – See Charles  
6 Nickerson's *Affidavit in Support of Motion for Relief from Judgment*, Exhibit 1.
- 7 • The assignment PHH relies upon for standing is fraudulent – "Fraud  
8 vitiates everything it touches." *Tusch Enterprises v. Coffin*, 113 Idaho 37, 740 P.2d  
9 1022 (1987).
- 10 • The *Second Affidavit of Ronald E. Casperite* which PHH and this Court relied upon  
11 for judgment is not notarized and invalid – See Charles Nickerson's *Affidavit in*  
12 *Support of Motion for Relief from Judgment*, Exhibit 4 and *Affidavit of Charles*  
13 *Nickerson in Support of Motion to Set Aside Judgment Based on Supplemental*  
14 *Evidence of Notary Fraud*, Exhibits 1 and 2. "a false notarization is a crime and  
15 undermines the integrity of our institutions upon which all must rely upon the faithful  
16 fulfillment of the notary's oath." *Klem v. Washington Mut. Bank*, 295 P.3d 1179, 176  
17 *Wash. 2d* 771 (2013).
- 18 • The *Second Affidavit of Ronald E. Casperite* was not based upon personal knowledge,  
19 presented contradictory evidence and impeached PHH's default claim used as a basis  
20 for this foreclosure action. Among other issues, PHH's original claim of default was  
21 14 months, but Mr. Casperite's affidavit now claims 9 months. Also, Mr. Casperite  
22 presented an illustrative account history that contradicted the account history  
23 provided by Chase and provided a different principal balance than what he claimed in  
24 his affidavit and which differed from the principal balance provided by Chase. Mr.  
25 Casperite's contradictory statements disqualify his testimony. *One making*  
26 *contradictory statements is not to be heard.*
- 27 • The Court entered contradictory and conflicting opinions regarding what the Court  
28 labeled as undisputed facts – "If the evidence is conflicting on material issues or  
29 supports conflicting inferences, or if reasonable minds could reach differing  
30 conclusions, summary judgment must be denied." *Doe v. Sisters of the Holy Cross*,  
31 126 Idaho 1036, 1039, 895 P.2d 1229, 1232 (Ct. App. 1995).

- 1 • The Nickersons former counsel, John Mitchell, in his affidavit, admits to negligence –  
2 See Charles Nickerson's *Affidavit in Support of Motion for Relief from Judgment*,  
3 Exhibit 8. "it is said that, where it appears that a judgment was taken against appellant  
4 through the negligence of an attorney who had been employed by such party, nothing  
5 is left to the discretion of the court, and the judgment must be set aside." *Pierce v.*  
6 *Vialpando*, 78 Idaho 274, 301 P.2d 1099 (1956).
- 7 • The Misconduct of lying to and misleading the Court committed by Kipp Manwaring  
8 and Jon Stenquist which violates the Idaho Attorney's Oath – "I will never seek to  
9 mislead a court or opposing party by false statement of fact or law, and will  
10 scrupulously honor promises and commitments made" – and violates I.C. § 3-201.  
11 **Duties of Attorneys.** 4. To employ, for the purpose of maintaining the causes  
12 confided to him, such means only as are consistent with truth, and never seek to  
13 mislead the judges by an artifice or false statement of fact or law.

14 Every single one of the above points, in and of themselves, requires this Court to provide  
15 relief from judgment and set aside judgment, and therefore, must not be ignored. In addition, the  
16 Idaho Rules of Civil Procedure, Idaho Judicial Canon, and 14<sup>th</sup> Amendment of the United States  
17 Constitution mandate this Court use the authority and discretion granted to it to make just and  
18 impartial determinations, ensure equal access to justice for both parties, and provide equal  
19 protection of laws and personal rights. Refusing to consider genuine issues of material fact and  
20 any merits of the case that prove the Nickersons have heroically fulfilled their obligations  
21 regarding this property, that PHH does not have any beneficial interest in it or right to foreclose  
22 whatsoever due to the actions or inactions of the Nickersons, and that rampant fraud has been  
23 committed against the Nickersons and on the Court does not follow these mandates.

24 Wherefore, the Nickersons request clarification from the Court regarding their 60(b)  
25 *Motion for Relief From Judgment or Order* and *Motion to Set Aside Judgment Based on*  
26 *Supplemental Evidence of Fraud on the Court* and request this Court enter an order specifically  
27 addressing briefing and oral argument regarding these motions and enter an opinion stating that  
28 since no order scheduling briefing or denying oral argument has been entered regarding these  
29 two 60(b) motions, it shall allow and consider the Nickersons' reply brief in support of their  
30 60(b) motions filed on November 12, 2014, and their response to the Plaintiff's Motion to Strike  
31 Exhibits filed on November 14, 2014, both of which were lawfully permitted, protected by and  
32

1 filed in accordance with I.R.C.P. 7(b)(3)(E). To disallow these briefs unduly prejudices the  
2 Nickersons and denies their access to justice.

3 In accordance with I.R.C.P. 7(d) and I.C. § 9-1406, I certify (or declare) under penalty of  
4 perjury pursuant to the laws of the State of Idaho that the foregoing is true and correct.

5  
6 DATED this 18<sup>th</sup> day of November, 2014

7   
8 CHARLES NICKERSON  
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 18<sup>th</sup> day of November, 2014, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

NOTE: Apparently Kipp Manwaring is no longer working for Just Law. However, we have not received notice from Kipp Manwaring, Just Law or the Court regarding his withdrawal nor has anyone provided information on who is now representing Just Law in this case. Therefore, we are just serving Just Law Office.

Just Law Office

381 Shoup Ave.

PO Box 50271

Idaho Falls, ID 83405

Fax (208)523-9146

( ) U.S. Mail

( ) Hand Delivered

( ) Overnight or Priority Mail

(x) Facsimile

Honorable Michael J. Griffin

Idaho County District Court

381 West Main

Grangeville, ID 83530

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Jon A. Stenquist

Moffatt Thomas Barrett Rock & Fields

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Idaho Falls, ID 83405

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( ) U.S. Mail

( ) Hand Delivered

( ) Overnight or Priority Mail

(x) Facsimile

  
Charles Nickerson

FILED  
CLERK OF DISTRICT COURT  
CLEARWATER COUNTY  
2014 NOV 18 AM 11:15  
CASE NO. CV2011-28  
BY BO DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER

PHH MORTGAGE,	)	
	)	
Plaintiff,	)	CASE NO. CV 2011-28
	)	
vs.	)	
	)	MEMORANDUM OPINION
CHARLES NICKERSON and DONNA	)	
NICKERSON, husband and wife;	)	
KNOWLTON & MILES, PLLC; WELLS	)	
FARGO BANK, N.A., and JOHN DOES	)	
I through X,	)	
Defendants,	)	
	)	
COLDWELL BANKER MORTGAGE, a	)	
d/b/a PHH MORTGAGE, and	)	
J P MORGAN CHASE BANK, N.A.	)	
	)	
Third Party Defendants	)	

Charles and Donna Nickerson (Nickersons) have filed four post-judgment motions pursuant to IRCP 60(b). The first motion, entitled Motion for Relief From Judgment or Order, was filed October 6, 2014 and referenced IRCP 60(b)(1), (2), (3), and (6). The second motion, entitled Motion to Set Aside Judgment, was filed October 20, 2014, and referenced IRCP 60(b)(3). The third motion, entitled Motion to Set Aside Judgment Based on Supplemental Evidence of Fraud on the Court, was filed October 21, 2014, and referenced IRCP 60(b)(3). The last motion, entitled Edited Motion to Set Aside Judgment, was filed October 22, 2014 and referenced IRCP 60(b)(3).

This case has been appealed by the Nickersons. IAR 13(b)(6) authorized the District Court to rule on motions brought under IRCP 60(b) during an appeal.

IRCP 60(b)(1) permits the trial court to relieve a party from a final judgment or order for mistake, inadvertence, surprise, or excusable neglect. IRCP 60(b)(2) permits relief to be granted based upon newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under IRCP 59(b) (i.e. within 14 days from the final judgment or order). IRCP 60(b)(3) permits relief to be granted based upon a finding of fraud, misrepresentation, or other misconduct of an adverse party. IRCP 60(b)(6) permits relief to be granted for any other reason justifying relief from the operation of the judgment.

The court notified the parties that it would rule on the post-trial motions based upon the affidavits and briefing submitted to the court by November 5, 2014. During prior motions the Nickersons merely read their briefing into the record without any substantial argument. Since November 5, 2014 the Nickersons have submitted numerous documents restating their previous positions.

The court has considered the affidavits submitted by the Nickersons and the briefing submitted by both parties, and being fully advised makes the following findings and conclusions.

#### OCTOBER 6<sup>TH</sup> MOTION

The first seven allegations of mistake refer to the Nickerson's belief that the court made a mistake in its rulings. IRCP 60(b)(1), when referring to "mistake", refers to mistakes made by the party not the court. The Nickersons have the right to appeal this case based upon their perceived mistakes made by the court, but that is not a basis for relief pursuant to IRCP 60(b)(1).

Allegations 8 and 9 of the Nickerson's motion request relief because they missed deadlines for filing certain motions. At times the Nickersons were represented by counsel, and, after counsel withdrew, the Nickersons represented themselves. In either case a mistake of law is not sufficient. The mistake must be one of fact. The Nickerson's allegations are one of law (i.e. when they must file motions) and not of fact.

The Nickersons claim they were surprised. They claim they were unaware of a summary judgment hearing held November 7, 2012. They further claim they were unaware that their attorney was given permission by the court to withdraw on May 15, 2013.

“Surprise” under IRCP 60(b)(2) refers to some condition or situation in which a party is unexpectedly placed to their injury without any negligence on their own part, and which ordinary prudence could not have guarded against.

PHH filed a motion for summary judgment October 16, 2012. The time for filing motions for summary judgment was based upon a stipulation of counsel filed September 27, 2012. The summary judgment was noticed for hearing and held on November 7, 2012.

Counsel for the Nickersons filed his motion to withdraw on February 25, 2013. A hearing on that motion was continued several times and finally held May 14, 2013. Counsel was permitted to withdraw. Counsel filed an affidavit of mailing on June 6, 2013. The Nickersons filed a notice of appearance on August 19, 2013. On September 9, 2013 the prior counsel’s office filed an affidavit regarding the Nickerson’s unclaimed mail.

Notice of the court’s order permitting counsel to withdraw was mailed to the Nickerson’s last known address as provided by counsel, and complied with IRCP 11(b)(2) and 77(d).

The Nickersons may not complain of failure to receive notices when they failed to accept their mail.

The Nickersons claim they relied upon their attorney, their attorney did not do the things he was supposed to do, and thus they should get relief from the judgment because of “excusable neglect”. If the Nickersons believe their attorney committed malpractice then they may consider an action against their attorney. A reasonably prudent person would be expected to rely on the advice of counsel. “Excusable neglect” is not merely neglect, but the neglect must be shown to be excusable. It is also a question of fact. The Nickersons are basically alleging that their attorney did not do a competent job in

representing them. That is not a proper basis for a claim that the Nickersons were negligent and their negligence was excusable.

The Nickersons also make general claims that the court somehow did not protect them from their counsel and counsel for PHH. The court does not take sides in a case and does not represent any party. The Nickersons have alleged on appeal that the court erred in entering a judgment. That is an issue for appeal, but is not a basis for relief on the theory that the Nickersons were negligent and their negligence was excusable, under IRCP 60(b)(1).

Next the Nickersons rely on IRCP 60(b)(2). However, the Nickersons do not point to any newly discovered evidence. They merely try to retry the motions for summary judgment. IRCP 60(b)(2) provides relief if relevant evidence was discovered after the time period for filing a motion under IRCP 59(b), and could not have been discovered earlier through due diligence. The Nickersons have not presented any new relevant evidence.

The Nickersons next claim they should be granted relief due to fraud, IRCP 60(b)(3). “Fraud” is fraud upon the court system, not fraud as in fraudulently inducing a person to enter into a contract (which would be an affirmative defense to an action for breach of contract). The Nickersons extensively allege fraud committed on them by the other parties to this case, but do not allege fraud on the court.

Next the Nickersons claim they should be granted relief due to misconduct by opposing counsel. Opposing counsel presented excerpts from depositions to be considered in the motions for summary judgment. The Nickersons claim that the depositions should not have been considered by the court. This is an issue on appeal. The Nickersons have not presented sufficient evidence to support their claim that opposing counsel knowingly presented false evidence (the depositions of the Nickersons) to the court.

The Nickersons did not present any additional evidence by way of affidavit regarding their request for relief pursuant to IRCP 60(b)(6).



#### OCTOBER 20<sup>TH</sup> MOTION

This motion to set aside judgment is based on IRCP 60(b)(3). Again, the Nickersons claim fraud was committed on the court. The Nickersons claim there was no assignment of their note to the plaintiffs and therefore the plaintiffs could not foreclose on the note. Their argument is that plaintiffs' counsel knowingly and falsely presented evidence to the court that they were the holder of the note the Nickersons promised to pay. This is a claim that is on appeal. This court concludes that the Nickersons have not presented sufficient evidence to support their claim for relief.

#### OCTOBER 21<sup>ST</sup> MOTION

This motion to set aside judgment based on supplemental evidence of fraud on the court relies upon IRCP 60(b)(3). The Nickersons claim that counsel for PHH knowingly and falsely presented false and inadmissible evidence to the court in support of their motion for summary judgment.

The issue of whether or not the court properly granted summary judgment is on appeal. The Nickersons have presented no evidence that counsel for the PHH committed fraud upon the court by knowingly and falsely presenting false evidence to the court.

#### OCTOBER 22<sup>ND</sup> MOTION

This last motion filed by the Nickersons also relies on IRCP 60(b)(3).

The Nickersons allege that PHH committed fraud upon the court by knowingly presenting a false document signed by Kirsten Bailey to the court. A person by the name of Kirsten Bailey signed an assignment of Deed of Trust and Deed of Trust Note on June 9, 2010. That document was notarized by a notary public in the State of Louisiana.

In support of their claim that the signature of Kirsten Bailey was a "robo" signature the Nickersons presented an affidavit from a person in Massachusetts who states that "Kirsten Bailey is an alleged robo or surrogate signer".

This affidavit from Massachusetts is irrelevant. Even if the affiant is referring to the same Kirsten Bailey he has no knowledge as to whether or not Kirsten Bailey did sign the assignment presented by PHH to the court, whether or not the person who signed the

assignment read and knew the contents of the assignment to be true, or whether or not the assignment is valid.

The Nickersons have presented no evidence that counsel for PHH committed fraud on the court by knowingly submitting false evidence in support of their motion for summary judgment.

For the reasons stated above the four motions for relief pursuant to IRCP 60(b) presented to the court by the Nickersons must be denied.

In addition, the court finds the motions to be frivolous. They were not supported by admissible evidence. The motions have caused unnecessary delay and needlessly increased the cost of this litigation. Counsel for PHH is entitled to attorney fees pursuant to IRCP 11(a)(1).

Dated this 18 day of November, 2014.

  
Michael J. Griffin  
District Judge

## CERTIFICATE OF MAILING

I, the undersigned Deputy Clerk of the above entitled Court, do hereby certify that a copy of the foregoing was mailed to, faxed to, or delivered by me on the 18<sup>th</sup> day of ~~March~~, 2014 to:

November

Just Law Office  
381 Shoup Avenue  
P.O. Box 50271  
Idaho Falls, ID 83405

X U.S. Mail

Jon A. Stenquist  
Moffatt Thomas Barrett rock & Fields  
P.O. Box 51505  
Idaho Falls, ID 83405

X U.S. Mail

Charles and Donna Nickerson  
3165 Neff Road  
Orofino, ID 83544

X U.S. Mail

Carrie Bird, Clerk of Court

By: Carrie Bird  
Deputy Clerk



FILED  
CLERK OF DISTRICT COURT  
CLEARWATER COUNTY

2014 DEC 10 PM 12:04

CASE NO. W2011-28BY BD DEPUTY

1 CHARLES NICKERSON AND DONNA NICKERSON

2 3165 Neff Rd  
3 Orofino, ID 83544

4 Appellants Pro Se

5  
6 **IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE**  
7 **OF IDAHO, IN AND FOR CLEARWATER COUNTY**  
8

9 PHH MORTGAGE,

Case No.: CV 2011-28

10 Plaintiff-Third Party Defendant-  
11 Counterdefendant-Respondent,**SECOND AMENDED  
NOTICE OF APPEAL**

12 v.

13 CHARLES NICKERSON and DONNA  
14 NICKERSON15 Defendants-Counterclaimants-Third  
16 Party Complainant-Appellant,

17 and

18 COLDWELL BANKER MORTGAGE, a d/b/a  
19 PHH MORTGAGE and JP MORGAN CHASE  
20 BANK, NA,

21 Third Party Defendants-Respondents.

22 TO: THE ABOVE NAMED RESPONDENTS, AND THEIR ATTORNEYS, AND TO THE  
23 CLERK OF THE ABOVE-ENTITLED COURT  
24

25 NOTICE IS HERBY GIVEN THAT:

26 1. The above named appellants, Charles and Donna Nickerson, being forced to represent  
27 themselves pro se against their will, appeal against the above named respondents to the Idaho  
28 Supreme Court from the District Court's Final Judgment, entered in the above entitled action on  
29 the 4<sup>th</sup> day of April 2014; the Order Dismissing Motions To Reconsider entered on the 6<sup>th</sup> day of  
30 May 2014; and other interlocutory orders; and the Order denying the Nickersons' 60(b) motions  
31 entered the 18<sup>th</sup> day of November 2014; Judge Michael J. Griffin presiding.  
32

1           2. That the party has a right to appeal to the Idaho Supreme Court, and the judgments or  
2 orders described in paragraph 1 above are appealable orders pursuant to I.A.R. 11(a) and any  
3 other such applicable rules that must be applied to ensure access to justice.

4           3. Appellants intend to assert a number of issues on appeal, including, but not limited to  
5 the issues set forth below.

6           4. The preliminary issues on appeal are as follows:

- 7           a. Whether the district court erred in denying a continuance of the February 11,  
8           2014, summary judgment hearing.
- 9           b. Whether the district court erred in refusing to acknowledge and consider  
10           appellants summary judgment Reply Brief and responses to additional motions.
- 11           c. Whether the district court erred in refusing to acknowledge and consider relevant  
12           and necessary supplemental evidence.
- 13           d. Whether the district court erred in refusing to acknowledge and consider  
14           demonstrated factual allegations of fraud and instruct or provide opportunity for  
15           appellants to amend pleadings.
- 16           e. Whether the district court erred in granting judgment knowing fraud was present  
17           and introduced.
- 18           f. Whether the district court erred in refusing to acknowledge and reprimand  
19           Plaintiff's misconduct in submitting an affidavit containing notary fraud.
- 20           g. Whether the district court erred in refusing to acknowledge and consider  
21           appellants prejudice due to issues surrounding their attorney's negligent  
22           representation and undisclosed withdrawal.
- 23           h. Whether the district court erred in refusing to recognize and acknowledge  
24           appellants had no knowledge of the summary judgment proceedings, deposition  
25           violations and other decisions and proceedings due to their attorney's  
26           misrepresentation of the case's status.
- 27           i. Whether the district court erred in refusing to acknowledge and consider amended  
28           pleadings.
- 29           j. Whether the district court erred in refusing to acknowledge and consider  
30           Plaintiff's illegal non-judicial foreclosure attempt and its effects on this fraudulent  
31           judicial foreclosure.
- 32           k. Whether the district court erred in refusing to reconsider judgment.

- 1 l. Whether the district court erred in refusing to reconsider summary judgment
- 2 dismissing appellants claims.
- 3 m. Whether the district court erred in refusing to reconsider striking portions of
- 4 appellants affidavit.
- 5 n. Whether the district court erred in refusing to seek justice in this case.
- 6 o. Whether the district court erred in granting a deficiency judgment.
- 7 p. Whether the district court erred by refusing to require Chase and PHH to provide
- 8 all communication records, recordings and account notations associated with the
- 9 Nickersons' account which detail, validate, corroborate and irrefutably prove the
- 10 Nickersons' claims regarding payments, account history and abusive collection
- 11 practices perpetrated against the Nickersons.
- 12 q. Whether the district court erred in allowing Chase to thwart discovery even when
- 13 the Nickersons' impeached Chase's testimony and proved their accounting was
- 14 inaccurate, opposing counsel lied about Chase having a contract with the
- 15 Nickersons and the Court recognized in memorandum Chase had a contractual
- 16 relationship with the Nickersons.
- 17 r. Whether the district court erred in refusing to provide relief from judgment or
- 18 order or to set aside judgment.

19 This appeal is taken upon both matters of law and issues of fact. Appellants reserve the  
20 right to add additional issues on appeal and to revise or restate the issues set forth above.

21 5. No portion of the record has been sealed.

22 6. A reporters transcript has not been ordered because no trial has been held in this case.

23 7. The appellants request the following documents in their entirety to be included in the  
24 clerk's record in addition to those automatically included under I.A.R. 28:

- 25 a. Affidavit of Brandie S. Watkins in Support of Chase's Motion for Summary
- 26 Judgment – Filed 11/06/2012.
- 27 b. Plaintiff's Second Motion for Summary Judgment – Filed 11/14/2013.
- 28 c. Affidavit of Chase Employee in Support of PHH's Second Motion for Summary
- 29 Judgment – Filed 11/14/2013.
- 30 d. Second Affidavit of Ronald E. Casperite in Support of PHH's Second Motion for
- 31 Summary Judgment – Filed 11/14/2013.
- 32

- e. Memorandum in Opposition to Plaintiff's Second Motion for Summary Judgment – Filed 12/3/2013.
- f. Reply Brief – Filed 12/10/2013.
- g. Motion for Summary Judgment – Filed 12/17/2013.
- h. Affidavit of Charles Nickerson in Support of Motion for Summary Judgment – Filed 12/17/2013.
- i. Memorandum in Support of Motion for Summary Judgment – Filed 12/17/2013.
- j. Response in Opposition to Nickersons' Motion for Summary Judgment – Filed 1/24/2014.
- k. Motion to Continue – Filed 2/05/2014.
- l. Reply Brief in Support of Nickersons' Motion for Summary Judgment – Filed 2/18/2014.
- m. Response in Opposition to Plaintiff's Motion to Conform to Evidence – Filed 2/18/2014.
- n. Response in Opposition to Plaintiff's Motion to Strike – Filed 2/18/2014.
- o. Response in Opposition to Plaintiff's Motion to Take Judicial Notice – Filed 2/18/2014.
- p. Notice of Supplemental Evidence – Filed 3/07/2014.
- q. Response to Plaintiff's Objection to Notice of Supplemental Evidence – Filed 3/26/2014.
- r. Objection to Second Affidavit of Ronald E. Casperite – Filed 3/26/2014.
- s. Motion to Reconsider Judgment – Filed 4/22/2014.
- t. Motion to Strike Second Affidavit of Ronald E. Casperite – Filed 4/22/2014.
- u. Affidavit in Support of Motions to Reconsider – Filed 4/22/2014.
- v. Motion to Reconsider Order Granting Motion to Strike – Filed 4/22/2014.
- w. Motion to Reconsider Chase's and PHH's Summary Judgment – Filed 4/22/2014.
- x. Motion for Leave to Amend Answer, Counterclaim, Third Party Complaint and Demand for Jury Trial – 4/22/2014.
- y. Memorandum in Support of Motion to Reconsider Judgment – Filed 5/5/2014.
- z. Memorandum in Support of Motion to Reconsider Order Granting Plaintiff's Motion to Strike – Filed 5/5/2014.

- 1 aa. Memorandum in Support of Motion to Reconsider Chase's and PHH's Summary  
2 Judgments – Filed 5/5/2014.
- 3 bb. Charles Nickerson's and Donna Nickerson's Amended Answer, Counterclaim,  
4 Third Party Complaint and Demand for Jury Trial – Filed 5/5/2014.
- 5 cc. Motion to Disallow All Costs and Fees – Filed 5/5/2014.
- 6 dd. Motion for Justice in Clearwater County Idaho – Filed 5/15/2014.
- 7 ee. Motion to Suppress and Strike Depositions – Filed 5/16/2014.
- 8 ff. Motion for Relief from Judgment or Order – Filed 10/6/2014.
- 9 gg. Affidavit in Support of Motion for Relief from Judgment – Filed 10/6/2014.
- 10 hh. Edited Motion to Set Aside Judgment – Filed 10/22/2014.
- 11 ii. Affidavit of Charles Nickerson in Support of Edited Motion to Set Aside  
12 Judgment – Filed 10/22/2014.
- 13 jj. Motion to Set Aside Judgment Based on Supplemental Evidence of Fraud on the  
14 Court – Filed 10/21/2014.
- 15 kk. Affidavit of Charles Nickerson in Support of Motion to Set Aside Judgment  
16 Based on Supplemental Evidence of Fraud on the Court – Filed 10/21/2014.
- 17 ll. Order – Filed on October 28, 2014.
- 18 mm. Motion to Set Schedule – Filed on November 3, 2014.
- 19 nn. Plaintiff's Response in Opposition to the Nickersons' Motions – Filed on  
20 November 5, 2014.
- 21 oo. Plaintiff's Motion to Strike Exhibits – Filed on November 5, 2014.
- 22 pp. Motion to Reconsider Order Filed on October 28, 2014, Prior to Rendering  
23 Judgment on the Nickersons' 60(b) Edited Motion to Set Aside Judgment – Filed  
24 on November 10, 2014.
- 25 qq. Reply Brief in Support of 60(b) Motions – Filed on November 12, 2014.
- 26 rr. Response in Opposition to Plaintiff's Motion to Strike Exhibits – Filed on  
27 November 14, 2014.
- 28 ss. Motion for Clarification Regarding Briefing and Oral Argument on Nickersons'  
29 60(b) Motion for Relief from Judgment or Order and 60(b) Motion to Set Aside  
30 Judgment Based on Supplemental Evidence – Filed on November 18, 2014.
- 31 tt. Memorandum Opinion – Filed on November 18, 2014.
- 32





1           8. The appellants reserve the right to supplement the record as necessary for justice to be  
2 served.

3           9. We certify:

- 4           a. The estimated fee for preparation of the clerk's record has been paid.  
5           b. The appellate filing fee has been paid.  
6           c. Service has been made upon all parties required to be served pursuant to I.A.R.  
7           20.

8 DATED this 10<sup>th</sup> day of December, 2014

9  
10    
11 Charles Nickerson and Donna Nickerson

12           We, CHARLES NICKERSON and DONNA NICKERSON, deposes and states: that we  
13 are appellants in the above-entitled appeal and that all statements in this notice of appeal are true  
14 and correct to the best of our knowledge and belief and, in accordance with I.C. § 9-1406, certify  
15 (or declares) under penalty of perjury pursuant to the laws of the State of Idaho that the  
16 foregoing is true and correct.

17 DATED this 10<sup>th</sup> day of December, 2014

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20 Charles Nickerson and Donna Nickerson  
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 18<sup>th</sup> day of December, 2014, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

Just Law Office

381 Shoup Ave.

PO Box 50271

Idaho Falls, ID 83405

Fax (208)523-9146

☐ U.S. Mail☐ Hand Delivered☐ Overnight or Priority Mail☒ Facsimile

Honorable Michael J. Griffin

Idaho County District Court

381 West Main

Grangeville, ID 83530

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Jon A. Stenquist

Moffatt Thomas Barrett Rock &amp; Fields

PO Box 51505

Idaho Falls, ID 83405

Fax (208)522-5111

☐ U.S. Mail☐ Hand Delivered☐ Overnight or Priority Mail☒ Facsimile  
Charles Nickerson

# In the Supreme Court of the State of Idaho

FILED  
CLERK OF DISTRICT COURT

2014 DEC 27 AM 8:13

CASE NO. CW2011-28

BY BD DEPUTY

PHH MORTGAGE,

Plaintiff-Third Party Defendant-  
Counterdefendant-Respondent,

v.

CHARLES NICKERSON and DONNA  
NICKERSON,

Defendant-Counterclaimant-Third Party  
Complainant-Appellant,

and

COLDWELL BANKER MORTGAGE, a  
d/b/a of PHH MORTGAGE, and JP  
MORGAN CHASE BANK, NA.

Third Party Defendants-Respondents.

ORDER RE: SUPPLEMENTAL  
RECORD

Supreme Court Docket No. 42163-2014  
Clearwater County No. 2011-28

A SECOND AMENDED NOTICE OF APPEAL was filed in District Court on December 10, 2014, in which Appellants requested the addition to the record of certain documents identified in the Second Amended Notice of Appeal as ff through tt. Therefore,

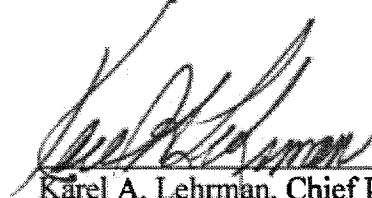
IT HEREBY IS ORDERED that the District Court shall prepare a Supplemental Electronic Clerk's Record within twenty-one (21) days from the date of this Order which consists of the documents identified in the Second Amended Notice of Appeal as ff through tt. The District Court Clerk shall serve the Supplemental Electronic Clerk's Record to Appellants, counsel and this Court at the same time. Settlement shall occur pursuant to I.A.R. 30.1.

IT FURTHER IS ORDERED that the Appellants shall pay the District Court the fee for preparation of the Supplemental Electronic Clerk's Record on or before seven (7) days from the date of this Order.

IT FURTHER IS ORDERED that Appellant's Brief shall be due fourteen (14) days from the date of filing of the Supplemental Electronic Clerk's Record in this Court.

DATED this 26<sup>th</sup> day of December, 2014.

For the Supreme Court

A handwritten signature in dark ink, appearing to read 'Karel A. Lehrman', is written over a horizontal line.

Karel A. Lehrman, Chief Deputy Clerk  
for Stephen W. Kenyon, Clerk

cc: Charles Nickerson, *pro se*  
Donna Nickerson, *pro se*  
Counsel of Record  
District Court Clerk  
District Court Judge

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER

PHH MORTGAGE,	)	
	)	SUPREME COURT NO. 42163-2014
Plaintiff-Third Party Defendant-	)	
Counterdefendant-Respondent,	)	
	)	
V.	)	CLERK'S CERTIFICATE
	)	OF EXHIBITS
CHARLES NICKERSON and DONNA	)	
NICKERSON	)	SUPPLEMENTAL RECORD
	)	
Defendant-Counterclaimant-Third	)	
Party Complainant-Appellant,	)	
V.	)	
	)	
COLDWELL BANKER MORTGAGE,	)	
A d/b/a of PHH MORTGAGE, and	)	
JPMORGAN CHASE BANK, N.A.,	)	
	)	
Third-Party Defendants-	)	
Respondents,	)	
	)	

I, Barbie Deyo, Deputy Clerk of the District Court of the Second Judicial District of the State of Idaho, in and for the County of Clearwater, do hereby certify:

There were no exhibits offered for identification or admitted into evidence during the course of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Orofino, Idaho this 14th day of January, 2015.

CARRIE BIRD  
Clerk of the District Court

BY: Barbie Deyo  
Deputy Clerk



IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER

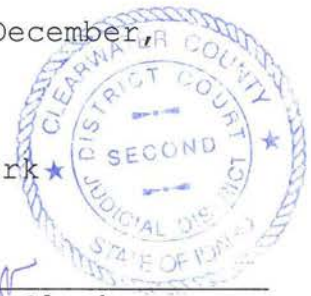
PHH MORTGAGE,	)	
	)	
Plaintiff-Third Party Defendant-	)	SUPREME COURT NO. 42163
Counterdefendant-Respondent,	)	
v.	)	CERTIFICATE TO RECORD
	)	
CHARLES NICKERSON and DONNA	)	SUPPLEMENTAL RECORD
NICKERSON,	)	
	)	
Defendant-Counterclaimant-Third	)	
Party Complainant-Appellant,	)	
	)	
v.	)	
	)	
COLDWELL BANKER MORTGAGE, a d/b/a	)	
of PHH MORTGAGE, and JPMORGAN	)	
BANK, N.A.,	)	
	)	
Third Party Defendants-Respondents	)	

I, Barbie Deyo, Deputy Clerk of the District Court of the Second Judicial District of the State of Idaho, in and for the County of Clearwater, do hereby certify that the above foregoing record in the above-entitled cause was compiled and bound under my direction as, and is a true and correct record of the pleadings and documents that are automatically required under Rule 28 of the Idaho Appellate Rules, as well as those requested by Counsels.

I FURTHER CERTIFY, that the Second Amended Notice of Appeal was filed in the District Court on the 10<sup>th</sup> day of December 2014.

CARRIE BIRD, Clerk

By Barbie Deyo  
Deputy Clerk



CERTIFICATE TO RECORD



IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER

PHH MORTGAGE,	)	
	)	
Plaintiff-Third Party Defendant-	)	SUPREME COURT NO. 42163
Counterdefendant-Respondent,	)	
	)	
v.	)	CERTIFICATE OF SERVICE
	)	
CHARLES NICKERSON and DONNA	)	SUPPLEMENTAL RECORD
NICKERSON	)	
	)	
Defendant-Counterclaimant-Third	)	
Party Complainant-Appellant,	)	
	)	
v.	)	
	)	
COLDWELL BANKER MORTGAGE, a d/b/a	)	
of PHH MORTGAGE, and JPMORGAN	)	
BANK, N.A.,	)	
	)	
Third Party Defendants-	)	
Respondents	)	

I, Barbie Deyo, Deputy Clerk of the District Court of the Second Judicial District of the State of Idaho, in and for the County of Clearwater, do hereby certify that copies of the Clerk's Record were placed in the United States mail and addressed to Kip L. Manwaring, Just Law Office, P.O. Box 50271, Idaho Falls, ID 83405 and Charles and Donna Nickerson, 3165 Neff Road Orofino, ID 83544 this 14<sup>th</sup> day of January, 2015.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 14<sup>th</sup> day of January, 2015.

CARRIE BIRD, Clerk

By Barbie Deyo  
Deputy

